



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शनिवार, 17 अगस्त, 2019 / 26 श्रावण, 1941

हिमाचल प्रदेश सरकार

H.P. STATE LEGAL SERVICES AUTHORITY, SHIMLA-9

NOTIFICATION

*Shimla-9 the 13th August, 2019*

**No. 9-LSA/Regulation/96.**—In exercise of the powers conferred under section-29 A of the Legal Services Authorities Act, 1987 (Act No. 39 of 1987), the Himachal Pradesh State Legal Services Authority hereby makes the following Regulations further to amend the Himachal Pradesh

State Legal Services Authority Regulations 1996, notified *vide* this Authority Notification No. 9-LSA/Regulations/96, dated 15th May, 1996, published in the Rajpatra, Himachal Pradesh, (Extra-ordinary), dated 17th May, 1996, namely :—

**1. Short title and commencement.**—(i) These regulations may be called the Himachal Pradesh State Legal Services Authority Regulations (12th Amendment, 2019) Regulations, 1996.

(ii) These regulations shall come into force *w.e.f.* 9-8-2019.

**2. Amendment in Regulations 15(h).**—In Regulation 15(h) of the Himachal Pradesh State Legal Services Authority Regulations, 1996 for the words "rupees one lakh", the words "rupees three lakh" shall be substituted.

By order,

Sd/-  
(PREM PAL RANTA)  
Member Secretary.

## DEPARTMENT OF LABOUR AND EMPLOYMENT

### NOTIFICATION

*Dated, the 5th Feb., 2019*

**No. Shram (A) 6-2/2014 (Awards) Dharamshala.**—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	64/18	Neelam Rani	M.D. M/s Terrace Pharmaceuticals	01-09-2018
2.	243/14	Sanjay Kumar	M/s GVK EMRI	01-09-2018
3.	242/14	Parveen Kumar	M/s GVK EMRI	01-09-2018
4.	241/14	Nitin Mahajan	M/s GVK EMRI	01-09-2018
5.	245/14	Rakesh Kumar	M/s GVK EMRI	01-09-2018
6.	620/16	Jagdish Chand	E.E. HPPWD, Sarkaghat	04-09-2018
7.	370/16	Chhering Yongzam	E.E. HPPWD, Killar	04-09-2018
8.	216/16	Hans Raj	E.E. I&PH/HPPWD, Killar	04-09-2018
9.	12/16	Ravinder Kumar	-do-	04-09-2018
10.	202/16	Parwati	-do-	04-09-2018
11.	389/16	Ratto Devi	-do-	04-09-2018
12.	307/16	Thulli Devi	-do-	04-09-2018
13.	54/17	Leela Ram	-do-	04-09-2018
14.	575/16	Guddi Devi	-do-	04-09-2018
15.	393/16	Bhoom Dei	-do-	04-09-2018

16.	425/16	Bego Devi	-do-	04-09-2018
17.	69/17	Kamla	-do-	04-09-2018
18.	626/16	Santosh Kumari	-do-	04-09-2018
19.	203/16	Sato Devi	-do-	04-09-2018
20.	457/15	Salochna Devi	-do-	04-09-2018
21.	201/16	Yog Raj	-do-	04-09-2018
22.	67/17	Jeevan Ram	-do-	04-09-2018
23.	598/16	Dhian Chand	-do-	04-09-2018
24.	74/17	Guddi	-do-	04-09-2018
25.	204/16	Sheela	-do-	04-09-2018
26.	340/16	Shumo Devi	-do-	04-09-2018
27.	540/16	Bimla	-do-	04-09-2018
28.	75/17	Kishan Lal	-do-	04-09-2018
29.	574/16	Mahesh Chand	-do-	04-09-2018
30.	598/15	Parwati	-do-	04-09-2018
31.	78/16	Jag Dev	-do-	04-09-2018
32.	339/16	Vidya Sagar	-do-	04-09-2018
33.	263/15	Balvir	E.E. HPPWD, Joginder Nagar	06-09-2018
34.	156/16	Tilak Raj	E.E. I&PH, Chamba	13-09-2018
35.	150/16	Dumnu	-do-	13-09-2018
36.	148/16	Mohinder	-do-	13-09-2018
37.	147/16	Rakesh Kumar	-do-	13-09-2018
38.	153/16	Subhash	-do-	13-09-2018
39.	149/16	Kamal Lal	-do-	13-09-2018
40.	155/16	Yash Pal	-do-	13-09-2018
41.	151/16	Devi Chand	-do-	13-09-2018
42.	152/16	Daleep Chand	-do-	13-09-2018
43.	157/16	Ramesh Kumar	-do-	13-09-2018
44.	154/16	Suresh Kumar	-do-	13-09-2018
45.	17/16	Shanti Devi	-do-	13-09-2018
46.	600/16	Laxmi	E.E. HPPWD, Killar	04-09-2018

By order,

NISHA SINGH, IAS,

Addl. Chief Secretary (Lab. &amp; Emp.).

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**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. 64/ 2018

Smt. Neelam Rani w/o Sh. Kishori Lal, r/o Village Anoh Diyal, P.O. Dhameta, Tehsil Fatehpur, District Kangra, H.P. ..Petitioner.

Versus

The Managing Director, M/s Terrace Pharmaceuticals(P) Ltd. Plot No. 38 (a), Phase-III, Industrial Area Sansarpur Terrace, Distt. Kangra, H.P. ..Respondent.

01-09-2018 Present : None for the petitioner.  
Sh. Raj Kumar, Accountant, for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.30 A.M. Be awaited and put up after lunch hours.

K. K. SHARMA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

01-09-2018 Present : None for the petitioner.  
Sh. Raj Kumar, Accountant, for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner today is indicative of the fact that she is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:  
01-09-2018 K. K. SHARMA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. 243/ 2014

Sh. Sanjay Kumar s/o Sh. Jiya Lal, V.P.O. Jamli, Tehsil Sadar, Distt. Bilaspur, H.P.  
*.Petitioner.*

*Versus*

1. M/s GVK Emergency Management & Research Institute, J.P. Motor Building, Village-Anji Barog Bye Pass, Solan-173211 (H.P.)
2. M/S Adecco Flexi One Workforce Solution Pvt. Ltd. C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area, Mohalli-160071(Area Office) ... *Respondents.*

01-09-2018 Present : None for the petitioner.  
Sh. Rajat Sahotra, adv. cs. for the respondent No.1.  
Sh. Manish Katoch, adv. cs. for the respondent No. 2.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.40 A.M. Be awaited and put up after lunch hours.

K. K. SHARMA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

01-09-2018 Present : None for the petitioner.  
Sh. Rajat Sahotra, adv. csl. for the respondent No. 1.  
Sh. Manish Katoch, adv. csl. for the respondent No. 2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner or his Ld. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for nonprosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:  
01-09-2018

K. K. SHARMA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 242/ 2014

Sh. Parveen Kumar s/o Sh. Sada Ram, Village Peharwin, P.O. Bhager, Tehsil Ghumarwin,  
Distt. Bilaspur, H.P. ..Petitioner.

*Versus*

1. M/S GVK Emergency Management & Research Institute, J.P. Motor Building, Village-Anji Barog Bye Pass, Solan-173211 (H.P.)
2. M/S Adecco Flexi One Workforce Solution Pvt. Ltd. C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area, Mohalli- 160071(Area Office)

*...Respondents.*

01-09-2018 Present : None for the petitioner.  
Sh. Rajat Sahotra, adv. csl. for the respondent No. 1.  
Sh. Manish Katoch, adv. csl. for the respondent No. 2.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.39 A.M. Be awaited and put up after lunch hours.

K. K. SHARMA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

01-09-2018 Present : None for the petitioner.  
Sh. Rajat Sahotra, adv. cs. for the respondent No. 1.  
Sh. Manish Katoch, adv. cs. for the respondent No. 2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.39 P.M. None appearance of petitioner or his Ld. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for nonprosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:  
01-09-2018

K. K. SHARMA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. 241/ 2014

Sh. Nitin Mahajan s/o Sh. Hari Krishan Mahajan, Old Bus Stand Ghumarwin, Tehsil & P.O. Ghumarwin, Distt. Bilaspur, H.P. ..Petitioner.

*Versus*

1. M/S GVK Emergency Management & Research Institute, J.P. Motor Building, Village-Anji Barog Bye Pass, Solan-173211 (H.P.)
2. M/s Adecco Flexi One Workforce Solution Pvt. Ltd. C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area, Mohalli-160071(Area Office) ...Respondents.

01-09-2018 Present : None for the petitioner.  
Sh. Rajat Sahotra, adv. cs. for the respondent No. 1.  
Sh. Manish Katoch, adv. cs. for the respondent No. 2.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.37 A.M. Be awaited and put up after lunch hours.

K. K. SHARMA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

01-09-2018 Present : None for the petitioner.  
Sh. Rajat Sahotra, adv. csl. for the respondent No. 1.  
Sh. Manish Katoch, adv. csl. for the respondent No. 2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.37 P.M. None appearance of petitioner or his Ld. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for nonprosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:  
01-09-2018

K. K. SHARMA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. 245/ 2014

Sh. Rakesh Kumar s/o Sh. Indere Singh, Village Bheri, P.O. Bharoli Kakan, Tehsil Jhanduta, Distt. Bilaspur, H.P. *..Petitioner.*

*Versus*

1. M/S GVK Emergency Management & Research Institute, J.P. Motor Building, Village-Anji Barog Bye Pass, Solan-173211 (H.P.)
2. M/S Adecco Flexi One Workforce Solution Pvt. Ltd. C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area, Mohalli-160071(Area Office) *...Respondents.*

01-09-2018 Present : None for the petitioner.  
Sh. Rajat Sahotra, adv. csl. for the respondent No. 1.  
Sh. Manish Katoch, adv. csl. for the respondent No. 2.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

K. K. SHARMA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

01-09-2018 Present : None for the petitioner.  
Sh. Rajat Sahotra, adv. csl. for the respondent No. 1.  
Sh. Manish Katoch, adv. csl. for the respondent No. 2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner or his Ld. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for nonprosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:  
01-09-2018

K. K. SHARMA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 620/16

Sh. Jagdish Chand s/o Shri Chandermani, r/o Village and P.O. Pehad, Tehsil Sarkaghat,  
District Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Sarkaghat, District Mandi, H.P.  
*...Respondent.*

04-09-2018 Present : Petitioner with Sh. N.L. Kaundal, A.R.  
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Heard. Petitioner *vide* his separate statement on oath has made statement that due to technical defect in claim petition he does not want to proceed with this case. He has specifically stated to have worked under H.P.P.W.D., Dharampur Division whereas reference so received from the appropriate Government pertaining to H.P.P.W.D., Division Sarkaghat. He has prayed for withdrawal of case with liberty to file fresh claim petition. Statement recorded and placed on file. In view of the statement so made by petitioner as stated above, the reference no. 620/16 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.



Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:  
04-09-2018

K. K. SHARMA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 216/2016  
Date of Institution : 11-04-2016  
Date of Decision : 04-09-2018

Shri Hans Raj s/o Shri Trilok Chand, r/o Village and Post Office Purthi, Tehsil Pangi,  
District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I.&P.H./ H.P.P.W.D. Division, Killar, Tehsil Pangi, District  
Chamba, H.P. *..Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Hans Raj s/o Shri Trilok Chand, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. during September, 2004 by the Executive Engineer, Killar Division, I.P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 7 years *vide* demand notice dated 05-04-2012, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1994 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for

continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Sher Singh who appointed in 1996, Gurde in 1996, Man Dei in 1994, Balwant in 1996, Ram Dei in 2003, Dev Raj in 2004, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. He further prayed for reinstatement in service *w.e.f.* month of October, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 2001 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if

petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30-11-2017 for determination:—

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 5-4-2012 qua his termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP*.
- (2) Whether termination of the services of petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? ..*OPP*.
- (3) If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump sum compensation of Rs. 40,000/- per operative part of award.

#### REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 2001 till September, 2004 whereas the claimant/petitioner alleges that he had worked from 1994 to October, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from June, 2001 and not from 1994. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 2001 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the

respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 90 days in the year 2001, 115 days in 2002, 116 days in 2003 and 104 days in 2004 and thus in his total service from 2001 to 2004 in 04 years as he had worked for 396 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2004, the petitioner had merely worked for 104 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 2001 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wage privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section

10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4]** it was held by this Court as follows-

“17 It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant



and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

**17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-**Industrial dispute raised after six years-Limitation Act not**

**applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed or that employees has superannuated or going to retire shortly and no period is left to his credit or where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of

work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 04 years and actually worked for 396 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years i.e.** demand notice was given on 5-4-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 40,000/- (Rupees forty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner

would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

*Issue No. 4:*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 40,000/- (Rupees forty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

K. K. SHARMA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 12/2016  
Date of Institution : 04-01-2016  
Date of Decision : 04-09-2018

Shri Ravinder Kumar s/o Shri Ram Nath, r/o Village Takwas, P.O. Hudan, Tehsil Pangi,  
District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P.  
*...Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Ravinder Kumar s/o Shri Ram Nath, r/o Village Takwas, P.O. Hudan, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated-nil-received on 29-05-2012 regarding his alleged illegal termination of services during September 2004 suffers from delay and latches? If not, Whether termination of the services of Shri Ravinder Kumar s/o Shri Ram Nath, r/o Village Takwas, P.O. Hudan, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1994 who continuously worked till September, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Tek Chand who appointed in 1998, Bhag Dei in 2000, Ram Dei in 2003, Dev Raj in 2007 and Bameshwar Dutt in 2011. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also

alleges that he has remained unemployed ever since his illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. He further prayed for reinstatement in service *w.e.f.* month of September, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 8 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1996 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no. 10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether industrial dispute raised by petitioner *vide* demand notice dated nil qua his termination of service during September, 2004 by respondent suffers from vice of delay and laches as alleged? If so, its effect? ..*OPP*.
- (2) Whether termination of service of petitioner by the respondent during September, 2004 is/was legal and justified? ..*OPP*.
- (3) If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of Rs. 80,000/- per operative part of award.

#### REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1996 till September, 2004 whereas the claimant/petitioner alleges that he had worked from 1994 to September, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from May, 1996 and not from 1994. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangti Sub Division Chamba District and remained engaged from 1996 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangti Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangti Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 65 days in the year 1996, 175 days in 1997, 45 days in 2000, 121½ days in 2001, 132 days in 2002, 131 days in 2003 and 88 days in 2004 and thus in his total service from 1996 to 2004 in 07 years as he had worked for 757½ days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2004, the petitioner had merely worked for 88 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.



15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1996 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in crossexamination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not

gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4]** it was held by this Court as follows-

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Samanta and Ors. v. Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid

down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum- Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service- Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of

reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in AIR 2014 SC (Supp) 121, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in 2014(3) Apex Court Judgments 652. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in AIR 2015 SC 3473. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment AIR 2015 SC *supra*, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in 2016 (1) Him. L.R. 502 titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In 2014 (3) Apex Court Judgment 652 (SC) similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of AIR 2015 SC 1373 titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in 2013 (136) FLR 893 (SC) titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex

Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 07 years and actually worked for 757½ days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** i.e. demand notice was given on 29-5-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 80,000/- (Rupees eighty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

*Issue No. 4:*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 80,000/- (Rupees eighty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt

of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

K. K. SHARMA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 202/2016  
Date of Institution : 26-03-2016  
Date of Decision : 04-09-2018

Smt. Parwati w/o Shri Ramesh, r/o Village Chalali, P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, Killar Division, I.&P.H./ H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. ..Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Parwati w/o Shri Ramesh, r/o Village Chalali, P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. during September, 2004 by the Executive Engineer, Killar Division, I.P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages and has raised her industrial dispute after more than 7 years *vide* demand notice dated-nil-received on 29-5-2012, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 7 years in raising the industrial dispute, what

amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1990 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Sher Singh who appointed in 1996, Gurdev in 1996, Man Dei in 1994, Balwant in 1996, Dila Ram in 1996, Tek Chand in 1998, Bhag Dei in 2000, Ram Dei in 2003, Dev Raj in 2007 and Bameshwar Dutt in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. she further prayed for reinstatement in service *w.e.f.* month of October, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1990 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-1998 having completed 8 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will



and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30-11-2017 for determination:—

- (1) Whether the industrial dispute raised by petitioner vide demand notice dated nil qua her termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.
- (2) Whether termination of the services of petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? ..OPP.
- (3) If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: Yes

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Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of Rs. 1,00,000/- per operative part of award.

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### REASONS FOR FINDINGS

#### *Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1995 till September, 2004 whereas the claimant/petitioner alleges that she had worked from 1990 to October, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from May, 1995 till September, 2004 and not from 1990 to October, 2004. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1995 to September, 2004. she has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the

Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 11 days in the year 1995, 146 days in 1997, 99 days in 1998, 85 days in 1999, 126 days in 2000, 65 days in 2001, 100 days in 2002, 113 days in 2003 and 99 days in 2004 and thus in her total service from 1995 to 2004 in 09 years as she had worked for 844 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2004, the petitioner had merely worked for 99 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central**

**Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B . This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in crossexamination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has

erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

**13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4]** it was held by this Court as follows-

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

**15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum- Processing Service Society Limited & Anr.[5]** this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it

cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court

titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service- Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghbir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance

of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 09 years and actually worked for 844 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years i.e.** demand notice was given on 29-5-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid



down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

*Issue No. 4:*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

K. K. SHARMA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 389/2016  
Date of Institution : 15-06-2016  
Date of Decision : 04-09-2018

Smt. Ratto Devi d/o Shri Lal Chand, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. ...Petitioner.

*Versus*

The Executive Engineer, I.&P.H. Division, Pangi at Killar, Tehsil Pangi, District Chamba, H.P. ...Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Ratto Devi d/o Sh. Lal Chand, Village Thandal, P.O. Purthi, Tehsil Pangi, Distt. Chamba, H.P. during 1994 by the Executive Engineer I&PH Division, Pangi Killar Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 249 days during the year 1993 to 1994 and has raised her industrial dispute vide demand notice dated nil (received in the office of the Labour Officer Chamba on 18-7-2012) after more than 17 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 17 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1993 who continuously worked till October, 1994 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating

the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Bhag Dei who appointed in 2000, Ram Dei in 2003, Dev Raj in 2007 and Bameshwar Dutt in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 1994 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 1994. She further prayed for reinstatement in service w.e.f. month of October, 1994 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1993 to October, 1994 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01-01-2001 having completed 8 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1993 who remained engaged till 1994 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum- Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 1994 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30-11-2017 for determination:—

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated nil qua her termination of service during year 1994 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP*.
- (2) Whether termination of the services of petitioner by the respondent during year 1994 is/was illegal and unjustified as alleged? ..*OPP*.
- (3) If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of Rs. 20,000/- per operative part of award.

#### REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1993 continuously worked till 1994 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to

plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1993 to October, 1994. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 1994 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1994. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 86 days in the year 1993 and 163 days in 1994 and thus in her total service from 1993 to 1994 in 02 years as she had worked for 249 days. Be it noticed that petitioner had worked for more than 160 days in preceding 12 months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 1994, the petitioner had worked for 163 days and thus immediately in preceding 12

calendar months from the month of termination petitioner had factually rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was required for respondent to have issued a notice under Section 25-F of the Act. Accordingly, respondent is held to have violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1995 or thereafter. All of these co-workers shown in Ex. PW1/B the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 1994 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in October, 1994, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wage privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self**

**employment merely differentiates the sources from which income is generated, the end use being the same’.** Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Samanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer

deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum- Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal



without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1994 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5 Industrial dispute-Termination of service- Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellatnt employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947-Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge

duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of „Last come First go“ was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that

workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 249 days as per mandays chart on record and that the services of petitioner were disengaged in October, 1994 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seventeen years i.e.** demand notice was given on 18-7-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

*Issue No. 4:*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

K. K. SHARMA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 307/2016  
Date of Institution : 12-05-2016  
Date of Decision : 04-09-2018

Smt. Thulli Devi w/o Shri Devi Chand, r/o Village Thandal, P.O. Purthi, Tehsil Pangi,  
District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I.&P.H. Division, Pangi at Killar, Tehsil Pangi, District Chamba,  
H.P. *...Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Thulli Devi w/o Sh. Devi Chand, Village Thandal, P.O. Purthi, Tehsil Pangi, Distt. Chamba, H.P. from 1997 by the Executive

Engineer, I&PH Division, Pangi at Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 253.5 days during the year 1996 to 1997 and has raised her industrial dispute vide demand notice dated Nil (received in the office of the Labour Officer Chamba on 18-7-2012) after more than 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year 1996 to 1997 and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1996 who continuously worked till October, 1997 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Bhag Dei who appointed in 2000, Ram Dei in 2003, Dev Raj in 2007 and Bameshwar Dutt in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 1997 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 1997. She further prayed for reinstatement in service *w.e.f.* month of October, 1997 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1996 to October, 1997 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2004 having completed 8 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1996 who remained engaged till 1997 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 1997 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30-11-2017 for determination:—

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated nil qua her termination of service during year 1997 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.
- (2) Whether termination of the services of petitioner by the respondent during year 1997 is/was illegal and unjustified as alleged? ..OPP.
- (3) If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.

Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of Rs. 25,000/- per operative part of award.

### REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1996 continuously worked till 1997 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1996 to October, 1997. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 1997 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1997. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 90.5 days in the year 1996 and 163 days in 1997 and thus in her total service from 1996 to 1997 in 02 years as she had worked for 253½ days. Be it noticed that petitioner had worked for more than 160 days in preceding 12 months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1997, the petitioner had worked for 163 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was required from respondent to have issued a notice under Section 25-F of the Act. Accordingly, respondent is held to have violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 1997 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1996 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**



16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B . This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in 1997, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this

Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

**13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4]** it was held by this Court as follows-

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

**15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum-Processing Service Society Limited & Anr. [5]** this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be

existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1997 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service- Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated

which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 253.5 days as per mandays chart on record and that the services of petitioner were disengaged in 1997 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **fourteen years i.e.** demand notice was given on 18-7-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ

jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment (2016) *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

*Issue No. 4:*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

K.K. SHARMA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 54/2017  
Date of Institution : 24-01-2017  
Date of Decision : 04-09-2018

Shri Leela Ram s/o Shri Bahg Chand, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District  
Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I&PH/HPPWD Division Pangi at Killar, Tehsil Pangi, District  
Chamba, H.P. ..Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Leela Ram s/o Sh. Bhag Chand, Village Shour, P.O. Purthi, Tehsil Pangi, Distt. Chamba, H.P. during 2004, by the Executive Engineer, HPPWD/IPH Division, Pangi at Killar Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 124 days during the years 2002 to 2004 and has raised his industrial dispute *vide* demand notice dated 21-10-2015 after more than 11 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1990 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that

petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Tek Chand who appointed in 1999, Baldev in 2000, Trilok Chand in 2002 and Hari Ram in 2003. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of October, 2005. He further prayed for reinstatement in service *w.e.f.* month of October, 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1990 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2000 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 2002 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no. 10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.



6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether termination of service of petitioner by the respondent during the year 2004 is/was legal and justified? ..*OPP*.
- (2) If issue no. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief.	: Petition is partly allowed awarding lump-sum compensation of Rs. 20,000/- per operative part of award.

#### REASONS FOR FINDINGS

*Issues No. 1, 2 and 4:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 2002 till September, 2004 whereas the claimant/petitioner alleges that he had worked from 1990 to October, 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged

from June, 2002 till September, 2004 and not from 1990 to October, 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 2002 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 26 days in the year 2002, 25 days in 2002 and 73 days in 2004 and thus in his total service from 2002 to 2004 in 03 years as he had worked for 124 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to

confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2004, the petitioner had merely worked for 73 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter. All of these co-workers shown in Ex. PW1/B the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 2002 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765**

in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka** [4] it was held by this Court as follows:—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In *Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)* 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum- Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

**17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the**

**State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service- Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947-Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based

on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before

exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 03 years and actually worked for 124 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eleven years i.e.** demand notice was given on 21-10-2015. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Id. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

*Issue No. 3:*

24. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not



maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

K.K. SHARMA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 575/2016  
Date of Institution : 24-08-2016  
Date of Decision : 04-09-2018

Smt. Guddi Devi w/o Shri Janak Nath, r/o V.P.O. Purthi, Tehsil Pangi, District Chamba,  
H.P. ..Petitioner.

*Versus*

The Executive Engineer, Killar Division, H.P.P.W.D. Division Killar (Pangi), Tehsil Pangi,  
District Chamba, H.P. ...Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Guddi Devi w/o Shri Janak Nath, r/o V.P.O. Purthi, Tehsil Pangi, District Chamba, H.P. during 07/2005 by the Executive Engineer, H.P.P.W.D. Division Killar, (Pangi) District Chamba, H.P., who has worked as beldar on daily wages basis and has raised her industrial dispute after more than 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 164, 162, 138, 139, 136.5, 117, 64, 107 and 59 days during years 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 respectively and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster-roll basis in the year 1994 who continuously worked till October 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Bhag Dei who appointed in 1995, Jai Dass in 1998, Prakash Chand in 2001, Ram Dei in 2003, Dev Raj in 2004, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back-wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October 2005. She further prayed for reinstatement in service *w.e.f.* month of October 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 31-12-2001 having completed 8 years of service and per the policy of

H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2003 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no. 10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2003 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether termination of service of petitioner by the respondent during July 2005 is/was legal and justified? ..OPP.
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

## Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief.	: Petition is partly allowed awarding lump-sum compensation of Rs. 60,000/- per operative part of award.

## REASONS FOR FINDINGS

*Issues No. 1, 2 and 4:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1997 till September, 2003 whereas the claimant/petitioner alleges that she had worked from 1994 to October 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from August, 1997 till September, 2003 and not from 1994 upto October 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from 1997 to September, 2003. She has also stated on oath that no notice under section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service,

no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangri Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangri Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 52 days in the year 1997, 81 days in 1999, 45 days in 2000, 96.5 days in 2001, 117 days in 2002 and 64 days in 2003 and thus in her total service from 1997 to 2003 in 06 years as she had worked for 455.5 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2002, the petitioner had merely worked for 64 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2003 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers

mentioned in para no. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify en-gagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September 2003, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back-wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

**13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka [4] it was held by this Court as follows—**

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Samanta and Ors. v. Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

**15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum- Processing Service Society Limited & Anr. [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—**

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld.



counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service- Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghbir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of

recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 455½ days as per mandays chart on record and that the services of petitioner were disengaged in September 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years i.e.** demand notice was given in the year 2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through

these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 60,000/- (Rupees sixty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

*Issue No. 3:*

24. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 60,000/- (Rupees sixty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

K.K. SHARMA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 393/2016  
Date of Institution : 15-06-2016  
Date of Decision : 04-09-2018

Smt. Bhoom Dei d/o Shri Mehar Chand, w/o Shri Des Raj, r/o Village Shoon, P.O. Killar, Tehsil Pangi, District Chamba, H.P. at present Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D., Division Killar (Pangi), District Chamba, H.P. *...Respondent.*

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Bhoom Dei d/o Shri Mehar Chand, w/o Shri Des Raj, r/o Village Shoon, P.O. Killar, Tehsil Pangi, District Chamba, H.P. **at present Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P.** during year 1998 by the Executive Engineer, H.P.P.W.D. Killar Division (Pangi), District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas she has raised the industrial dispute *vide* demand notice dated 11-04-2012 after lapse of 13 years. If not, keeping in view delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition revealed that petitioner/claimant had been initially engaged as daily wage beldar on muster-roll basis in the year 1994 who continuously worked till October, 1998 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purpose of calculation of 160 days in tribal area for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason

for retrenchment besides no retrenchment compensation was paid to petitioner. It is contended that respondent had not followed procedure envisaged under Section 25-F of the Act while disengaging/retrenching service of petitioner. It is stated that petitioner is very poor having no source of income besides after termination of her service, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the service of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and thereby respondent/department had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained juniors to petitioner who are still in service namely Gurdev who appointed in 1994, Man Dei in 1994, Sher Singh in 1996, Balwant in 1996, Dila Ram in 1996, Tek Chand in 1998, Bhag Dei in 2000, Ram Dei in 2003, Dev Raj in 2007 and Bameshwar Dutt in 2011. The petitioner claimed that she had spotless service record who had never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 1998 till the date of institution of present claim petition who was not gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Sections 25-F, 25-G and 25-H of Act and Article 14 and 16 of Constitution of India and accordingly, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 1998. She further prayed for reinstatement in service *w.e.f.* month of October, 1998 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 1998 be counted for the purpose 160 days of continuous service and regularization of the service of petitioner *w.e.f.* 1-1-2004 having completed 8 years of service as per the policy of H.P. Govt. and to any other relief petitioner is entitled.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had not worked with the respondent as such question of completion of 240 days did not arise. It is further denied that respondent had engaged persons junior to the petitioner or that intermittent breaks in service as claimed by petitioner had been given. It is emphatically denied that respondent had violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner rather allegation of violation of principle of 'Last come First go' was asserted to have not been adhered to by respondent.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether termination of service of petitioner by the respondent during the year 1998 is/was legal and justified? ..*OPP*.
  - (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
  - (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
  - (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.
- Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: No
Relief.	: Claim Petition is dismissed per operative part of award.

#### REASONS FOR FINDINGS

*Issues no. 1, 2 and 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that there is no documentary evidence establishing that petitioner had ever worked with respondent more specifically as alleged in claim petition. Be it stated that no mandays chart has been produced or proved by either parties showing that petitioner had been factually engaged by respondent from 1994 to October, 1998. The plea of respondent as can be seen from reply on record reveal that petitioner was never engaged by respondent and therefore question of petitioner having completed 240 days and thereafter being retrenchment as claimed by respondent did not arise. As such, it was the petitioner who had to prove that she had worked under respondent for the period as alleged in claim petition and thereafter illegally terminated.

12. To prove her case petitioner has sworn in affidavit Ex. PW1/A reiterated her stand as maintained in the claim petition. The testimony of petitioner has not been corroborated by any co-worker who might have worked with her and as such uncorroborated testimony of petitioner cannot be relied so as to hold that petitioner was engaged on muster roll on 1994 as claimed by petitioner rather respondent has specifically denied relationship of petitioner being employee of respondent at any point of time. RW1 has repudiated claim of the petitioner in entirety by tendering mandays chart Ex. RW1/B. Cross-examination of RW1 reveals that according to record available in the office petitioner had neither been engaged nor worked under HPPWD Division Killar.

13. Ld. counsel for the petitioner has contended that since reference has been received from appropriate govt. it necessarily follows that some conciliation proceedings had taken place before Conciliation Officer followed by submission of failure report under Section 12(4) of the Act consequent upon which reference has been received which establishes existence of industrial dispute existed *inter-se* parties. On the other hand, Ld. Dy. D.A. for the State has contended that even in proceedings before the Conciliation Officer similar stand had been taken *i.e.* respondent having not been engaged petitioner at any point of time. In such like situation when petitioner

alleged that conciliation proceedings which ended in failure report, the best evidence qua petitioner having been engaged could be established by producing reply filed by the respondent before Conciliation Officer Chamba which has not been done in this case. In absence of the same by withholding best evidence available with the petitioner, an adverse inference has been drawn against the petitioner's claim. Accordingly, when petitioner has failed to prove to have worked with the respondent, it was not necessary for the respondent to have resorted to procedure envisaged for retrenchment under section 25-F of the Act *i.e.* issuance of one month notice or compensation in lieu thereof. In view of foregoing respondent is held to have not violated provisions of Sections 25-G and 25-H of the Act as petitioner failed to prove having been engaged by respondent as discussed in foregoing paragraphs. Accordingly, issue no. 1 is answered in negative holding that respondent has not terminated service of petitioner in the month of October 1998 & has thus not violated Section 25-F, 25-G and 25-H of the Act and for said reason, petitioner is not entitled for any consequential service benefits as claimed. Issue no.1 is thus answered in negative. In so far as issue no. 3 qua maintainability of claim petition, suffice would be to state here that when petitioner had not been engaged by respondent at any point of time as discussed in foregoing paras, the petition so moved could not be stated to be maintainable. This issue is answered in affirmative against the petitioner in favour of respondent. All the issues stated above are decided against petitioner and in favour of respondent.

*Issue No. 4:*

14. As has been discussed in foregoing paras that petitioner was not engaged by the respondent, the plea of claim petition being bad on account of delay and laches does not arise and issue no. 4 is answered in negative in favour of petitioner and against respondent.

*Relief:*

15. As a sequel to my findings on foregoing issues no. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

K.K. SHARMA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 425/2016  
Date of Institution : 19-08-2016  
Date of Decision : 04-09-2018

Smt. Bego Devi w/o Shri Prakash Chand, r/o Village Kuffa, P.O. Killar, Tehsil Pangi, District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. ..Respondent.

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Bego Devi w/o Shri Prakash Chand, r/o Village Kuffa, P.O. Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 by the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P., who has worked as beldar on daily wages basis and has raised her industrial dispute *vide* demand notice dated 30-05-2012 after more than 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 125, 121.5, 123, 199, 101, 145, 140, 137, 150, 141 and 101 days during years 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004 respectively and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster-roll basis in the year 1994 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated,



respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Bhag Dei who appointed in 1995, Jai Dass in 1998, Prakash Chand in 2001, Ram Dei in 2003, Dev Raj in 2004, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25 G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of October 2004. She further prayed for reinstatement in service *w.e.f.* month of October 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* October, 2001 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no. 10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether termination of service of petitioner by the respondent during September 2004 is/was legal and justified? ..*OPP*.
- (2) If issue no. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief.	: Petition is partly allowed awarding lump sum compensation of Rs. 1,80,000/- per operative part of award.

#### REASONS FOR FINDINGS

*Issues No. 1, 2 and 4:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis in the year 1994 continuously worked till 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangri Sub Division Chamba District and remained engaged from 1994 to September, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of re-instatement of service with full back-wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangri Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangri Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 125 days in the year 1994, 121½ days in 1995, 123 days in 1996, 199 days in 1997, 101 days in 1998, 145 days in 1999, 140 days in 2000, 137 days in 2001, 150 days in 2002, 141 days in 2003 and 101 days in 2004 and thus in her total service from 1994 to 2004 in 11 years as she had worked for 1483½ days. Be it noticed that petitioner had not worked for more than 160 days preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2004, the petitioner had merely worked for 101 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was not at all required for respondent to have issued a notice under section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25- G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully

employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Samanta and Ors. v. Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by

this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum-Processing Service Society Limited & Anr.* [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the Learned Single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5 Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of

reinstatement but the judgment has certainly not been correctly appreciated by Id. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in AIR 2014 SC (Supp) 121, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in 2014(3) Apex Court Judgments 652. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in AIR 2015 SC 3473. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment AIR 2015 SC *supra*, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in 2016 (1) Him. L.R. 502 titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In 2014 (3) Apex Court Judgment 652 (SC) similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of AIR 2015 SC 1373 titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in 2013 (136) FLR 893 (SC) titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex



Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 11 years and actually worked for 1483.5 days as per mandays chart on record and that the services of petitioner were disengaged in 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** i.e. demand notice was given on 30-5-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back-wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 1,80,000/- (Rupees one lakh eighty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

*Issue No. 3:*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 1,80,000/- (Rupees one lakh eighty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt

of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 69/2017  
Date of Institution : 23-02-2017  
Date of Decision : 04-09-2018

Mrs. Kamla d/o Shri Bhim Singh, r/o Village & P.O. Rei at present w/o Shri Heera Lal, Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, IPH/HPPWD, Division Killar at Pangi, Tehsil Pangi, District Chamba, H.P. ..Respondent.

### Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Mrs. Kamla d/o Sh. Bhim Singh, Village & P.O. Rei at present w/o Sh. Heera Lal, Village Thandal, P.O. Purthi Tehsil Pangi, Distt. Chamba, H.P. during 2004, by the Executive Engineer, HPPWD/I&PH Division, Killar at Pangi, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 472 days during the year 1997, only for 18 days, and 1999 to 2004 and has raised her industrial dispute *vide* demand notice dated 22-9-2015 after more than 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is

legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1994 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Bhag Dei who appointed in 1995, Jai Dass in 1998, Prakash Chand in 2001, Ram Dei in 2003, Dev Raj in 2004, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October 2004. She further prayed for reinstatement in service *w.e.f.* month of October, 2004 alongwith backwages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 1-1-2002 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by

stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No. 10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether termination of service of petitioner by the respondent during the year 2004 is/was legal and justified? ..OPP.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: Discussed

Issue No. 3	: No
Issue No. 4	: Discussed
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 40,000/- per operative part of award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 4:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1997 till September, 2004 whereas the claimant/petitioner alleges that she had worked from 1994 to October, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from May, 1997 till September, 2004 and not from 1994 upto October, 2004. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1997 to September 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 18 days in the year 1997, 43 days in 1999, 75 days in 2000, 118.5 days in 2001, 141 days in 2002, 111 days in 2003 and 45 days in 2004 and thus in her total service from 1997 to 2004 in 07 years as she had worked for 551.5 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2004, the petitioner had merely worked for 45 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B . This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this

Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

**13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka [4] it was held by this Court as follows—**

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....” (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

**15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr. [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—**

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be



existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in incapacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated

which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 7 years and actually worked for 551.5 days as per mandays chart on record and that the services of petitioner were disengaged in 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eleven years** *i.e.* demand notice was given on 22-9-2015. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ

jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment (2016) *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 1,80,000/- (Rupees forty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

*Issue No. 3:*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 40,000/- (Rupees forty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

Sd/-  
(K. K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 626/2016  
Date of Institution : 01-09-2016  
Date of Decision : 04-09-2018

Smt. Santosh Kumari w/o Shri Ram Singh, r/o Village Manjlu, P.O. Karyas, Tehsil Pangi,  
District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I.&P.H/H.P.P.W.D., Division Killar, Tehsil Pangi, District  
Chamba, H.P. ..Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Santosh Kumari w/o Shri Ram Singh, r/o Village Manjlu, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. during September, 2004 by the Executive Engineer, I.P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages and has raised her industrial dispute after more than 7 years *vide* demand notice dated 28-02-2012, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster-roll basis in the year 1999 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the

provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Bhag Dei who appointed in 2000, Ram Dei in 2003, Dev Raj in 2007 and Bameshwar Dutt in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of October, 2005. She further prayed for reinstatement in service *w.e.f.* month of October, 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1999 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 1-1-2008 having completed 8 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1999 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*- Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether termination of service of petitioner by the respondent during September, 2004 is/was legal and justified?
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 60,000/- per operative part of award.

#### REASONS FOR FINDINGS

*Issues No. 1, 2 and 4:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1999 till September 2004 whereas the claimant/petitioner alleges that she had worked from 1999 to October 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged till September 2004 and not upto October, 2005. Admittedly, the reference of appropriate

govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from 1999 to September, 2004. She has also stated on oath that no notice under section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 60 days in the year 1999, 148 days in 2000, 59 days in 2001, 77 days in 2002, 118 days in 2003 and 102 days in 2004 and thus in her total service from 1999 to 2004 in 6 years as she had worked for 564 days. Be it noticed that petitioner had not worked for more than 160 days preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year



2004, the petitioner had merely worked for 102 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/B the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1999 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is**

**generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same’.** Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the Learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka** [4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors.

(*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.* [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the Learned Single Judge and the Division

Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947-Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties

cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute

before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 6 years and actually worked for 654 days as per mandays chart on record and that the services of petitioner were disengaged in 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years i.e.** demand notice was given on 28-2-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 60,000/- (Rupees sixty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

*Issue No. 3:*

24. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 60,000/- (Rupees sixty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018

K.K. SHARMA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 203/2016  
Date of Institution : 26-03-2016  
Date of Decision : 04-09-2018

Smt. Sato Devi w/o Shri Dhano, r/o Village Kuthah, P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, Killar Division, I.P.H/H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. ...Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Sato Devi w/o Shri Dhano, r/o Village Kuthah, P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. during September, 2002 by the

Executive Engineer, Killar Division, I.P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages basis and has raised her industrial dispute after more than 9 years *vide* demand notice dated-nil received on 15-06-2012, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above exworker is entitled to form the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1991 who continuously worked till September, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Bhag Dei who appointed in 2000, Ram Dei in 2003, Dev Raj in 2007 and Bameshwar Dutt in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. She further prayed for reinstatement in service *w.e.f.* month of September, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1991 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 1-1-2001 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits



denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1991 who remained engaged till 2002 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come First go'. It is also contended that if petitioner had been terminated in 2002 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30-11-2017 for determination:—

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* her termination of service during September, 2002 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP*.
- (2) Whether termination of the services of petitioner by the respondent during September, 2002 is/was illegal and unjustified as alleged? ..*OPP*.
- (3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump-sum compensation of Rs. 50,000/- per operative part of award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1991 till September, 2002 whereas the claimant/petitioner alleges that she had worked from 1991 to September, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1991 till September, 2002 and not upto September, 2004. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division, Chamba District and remained engaged from 1991 to September, 2002. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of re-instatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2002 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities

under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2002. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 84 days in the year 1991, 56 days in 1992, 31 days in 1993, 172 days in 1994, 19 days in 1996, 47 days in 1999, 47 days in 2001 and 62 days in 2002 and thus in her total service from 1991 to 2002 in 8 years as she had worked for 518 days. Be it noticed that petitioner had not worked for more than 160 days preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2002, the petitioner had merely worked for 62 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under section 25-B of Act and thus it was not at all required for respondent to have issued a notice under section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2002 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers

mentioned in para No. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1991 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in 2002, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

**13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. Vs. Telecom District Manager, Karnataka [4] it was held by this Court as follows—**

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

**15. In the case of Ajaib Singh Vs. The Sirhind Co-Operative Marketing-Cum- Processing Service Society Limited & Anr. [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—**

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2002 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id.

counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.**

20. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul Vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of re-instatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employee has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered incapacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121, Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh Vs. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC**

**supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another Vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 8 years and actually worked for 518 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years i.e.** demand notice was given on 15-6-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the



petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

22. In view of foregoing discussion, a lump-sum compensation of Rs. 50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

*Issue No. 3:*

23. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

24. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 457/2015  
Date of Institution : 29-10-2015  
Date of Decision : 04-09-2018

Smt. Salochna w/o Shri Roop Singh, r/o Village Kironi Mouch, P.O. Kothi, Tehsil Pangi,  
District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I.&P.H./H.P.P.W.D., Division Killar, Tehsil Pangi, District  
Chamba, H.P. ..Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Salochna w/o Shri Roop Singh, r/o Village Kironi Mouch, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 06-10-2011 regarding his alleged illegal termination of services during September, 2004 suffers from delay and laches? If not, Whether termination of the services of Smt. Salochna w/o Shri Roop Singh, r/o Village Kironi Mouch, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1994 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating

the reason for retrenchment besides no retrenchment compensation was paid to petitioner. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Gurdev who appointed in 1994, Man Dei in 1994, Sher Singh in 1996, Balwant in 1996, Dila Ram in 1996, Tek Chand in 1998, Bhag Dei in 2000, Ram Dei in 2003, Dev Raj in 2007 and Bameshwar Dutt in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. She further prayed for reinstatement in service *w.e.f.* month of October, 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 1-1-2002 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1991 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back-wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B. K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether industrial dispute raised by petitioner *vide* demand notice dated 6-10-2011 *qua* his termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP*.
- (2) Whether termination of service of petitioner by the respondent during September, 2004 is/was legal and justified? ..*OPP*.
- (3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? .. *OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

Relief.

- (9) For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump-sum compensation of Rs. 1,50,000/- per operative part of award.

#### REASONS FOR FINDINGS

*Issues No. 1, 2 and 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to

period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1991 till September, 2004 whereas the claimant/petitioner alleges that she had worked from 1994 to October, 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1991 to September 2004 and not from 1994 to October, 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangri Sub-Division Chamba District and remained engaged from 1991 to September, 2004. She has also stated on oath that no notice under section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of re-instatement of service with full back-wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangri Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangri Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 26 days in the year 1991, 30 days in 1992, 52 days in 1993, 167 days in 1994, 97 days in 1996, 28 days in 1997, 57 days in 1998, 148 days in 1999, 130 days in 2000, 54 days in 2001, 95 days in 2002, 135 days in 2003 and 108 days in 2004 and thus in her total service from 1991 to 2004 in 13 years as she had worked for 1127 days. Be it noticed that petitioner had not worked for more than 160 days preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2004, the petitioner had merely worked for 108 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under section 25-B of Act and thus it was not at all required for respondent to have issued a notice under section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1991 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. PW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. PW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full

back-wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. Vs. Telecom District Manager, Karnataka** [4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In *Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors. (supra)* 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute inspite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of *Ajaib Singh Vs. The Sirhind Co-Operative Marketing-Cum-Processing Service Society Limited & Anr.* [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.



17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5 Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash**

**Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employee has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh Vs. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another Vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the

judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 13 years and actually worked for 1127 days as per mandays chart on record and that the services of petitioner were disengaged in 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years i.e.** demand notice was given on 6-10-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Id. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Id. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 1,50,000/- (Rupees one lakh fifty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 3 are answered accordingly.

*Issue No. 4:*

24. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 1,50,000/- (Rupees one lakh fifty thousand only) to the petitioner in lieu of the reinstatement, back-wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 201/2016  
Date of Institution : 26-03-2016  
Date of Decision : 04-09-2018

Shri Yog Raj s/o Shri Prem Lal, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, Killar Division, H.P.P.W.D., Killar Tehsil Pangi, District Chamba, H.P. *..Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

## AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Yog Raj s/o Shri Prem Lal, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. during October, 2005 by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 6 years *vide* demand notice dated 25-3-2012, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 6 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1996 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Sher Singh who appointed in 1996, Gurdev in 1996, Man Dei in 1994, Balwant in 1996, Ram Dei in 2003, Dev Raj in 2004, Dila Ram in 1996, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. He further prayed for reinstatement in service *w.e.f.* month of October, 2005 alongwith backwages, seniority including continuity in service as petitioner has remained unemployed since the date of

his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1996 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2003 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 2005 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2005 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for chargesheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back-wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether termination of service of petitioner by the respondent during October, 2005 is/was legal and justified? ..OPP.
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.

(4) Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 65,000/- per operative part of award.

### REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1998 till September 2005 whereas the claimant/petitioner alleges that he had worked from 1998 to September 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from June, 1998 and not from 1996. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from 1998 to September, 2005. He has also stated on oath that no notice under section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2005 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised chargesheet against him but even while retrenching petitioner from service,

no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangri Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2005. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangri Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 132 days in the year 1998, 95 days in 1999, 72 days in 2000, 65 days in 2001, 67 days in 2002, 67 days in 2003, 67 days in 2004 and 61 days in 2005 and thus in his total service from 1998 to 2005 in 8 years as he had worked for 599 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2005, the petitioner had merely worked for 61 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under section 25-B of Act and thus it was not at all required for respondent to have issued a notice under section 25-F of Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/B the yearwise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2005 even at the time when junior persons were re-engaged. That being so the



respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. PW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in October, 2005, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full backwages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

**13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—**

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

**15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr. [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—**

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld.

Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5 Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in a calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947-Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of

recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 599 days as per mandays chart on record and that the services of petitioner were disengaged in October 2005 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **six years i.e.** demand notice was given on 25-3-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are

not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 65,000/- (Rupees sixty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

*Issue No. 3:*

24. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 65,000/- (Rupees sixty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

K.K. SHARMA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 67/2017  
Date of Institution : 22-02-2017  
Date of Decision : 04-09-2018

Shri Jeevan Ram s/o Shri Roshan Lal, r/o Village Thandal, P.O. Purthi, Tehsil Pangi,  
District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I.P.H. Division, Pangi at Killar, Tehsil Pangi, District Chamba,  
H.P. ..Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Jeevan Ram, s/o Sh. Roshan Lal, Village Thandal, P.O. Purthi, Tehsil Pangi, Distt. Chamba, H.P. during year 1997, by the Executive Engineer, IPH Division, Pangi at Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 18 days during the year 1997 and has raised his industrial dispute *vide* demand notice dated Nil received in the office of the Labour Officer Chamba on 3-7-2015 after more than 18 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 18 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster-roll basis in the year 1997 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner. It is contended that respondent had not followed the provisions of Section 25-F of the Act while

disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come First go' envisaged under section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Tek Chand who appointed in 1998, Bhag Dei in 2000, Ram Dei in 2003, Dev Raj in 2007 and Bameshwar Dutt in 2011. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no chargesheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained un-employed ever since his illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back-wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. He further prayed for reinstatement in service *w.e.f.* month of October 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1997 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2005 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come First go'. It is also contended that if petitioner had been terminated in 1997 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.



6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 6-3-2018 for determination:—

- (1) Whether termination of the services of petitioner by the respondent during year 1997 is/was improper and unjustified as alleged? ..*OPP*.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 10,000/- per operative part of award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 4:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked till June, 1997 whereas the claimant/petitioner alleges that he had worked from 1997 to October, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged till June 1997 and not upto October, 2004. Admittedly, the reference of appropriate govt. does not relate to

plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged till 1997. He has also stated on oath that no notice under section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back-wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in June, 1997 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after June, 1997. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had merely worked for 18 days in the year 1997 and thus in his total service in 1997 in one month as he had worked for 18 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 1997, the petitioner had merely worked for 18 days and thus immediately in preceding 12 calendar

months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under section 25-B of Act and thus it was not at all required for respondent to have issued a notice under section 25-F of Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the yearwise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after June, 1997 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to yearwise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in June, 1997, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self**

**employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka** [4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Samanta and Ors. v. Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer

deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing-cum-Processing Service Society Limited & Anr.* [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal

without examining the case in its proper perspective, keeping in view the power of the State Government under section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1997 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in a calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellante/employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered incapacitated to discharge duties

cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of re-instatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute

before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about one month and actually worked for 18 days as per mandays chart on record and that the services of petitioner were disengaged in June, 1997 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eighteen years i.e.** demand notice was given on 3-7-2015. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 10,000/- (Rupees ten thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

*Issue No. 3:*

24. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.



*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 10,000/- (Rupees ten thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

Sd/-  
(K.K. SHARMA).  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 598/2016  
Date of Institution : 27-08-2016  
Date of Decision : 04-09-2018

Shri Dhian Chand s/o Shri Suram Chand, r/o Village Dharwas, P.O. Dharwas, Tehsil Pangi,  
District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P.  
*...Respondent.*

### Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Dhian Chand s/o Sh. Suram Chand, Village Dharwas, P.O. Dharwas, Tehsil Pangi, Distt. Chamba, H.P. during 9/1999 by the Executive Engineer, HPPWD Division, Killar (Pangi), District Chamba, H.P. who had worked as beldar on daily wages basis only for 357 days during the years 7/1991 to 9/1999 and has raised his industrial dispute *vide* demand notice dated Nil (received in the office of Labour Officer Chamba on 8-6-2015) after more than 15 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year mentioned as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on musterroll basis in the year 1991 who continuously worked till September, 1999 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come First go' envisaged under section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Sher Singh who appointed in 1996, Gurdev in 1996, Man Dei in 1994, Balwant in 1996, Ram Dei in 2003, Dev Raj in 2004, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that he had spotless service record who never been chargesheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no chargesheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 1999. He further prayed for reinstatement in service *w.e.f.* month of September, 1999 alongwith backwages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1991 to September, 1999 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-

2001 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1991 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 1999 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for chargesheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether termination of service of petitioner by the respondent during September, 1999 is/was legal and justified as alleged? ..OPP.
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

## Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 20,000/- per operative part of award.

## REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar *w.e.f.* 1991 to September, 1999 by respondent on musterroll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1991 to September, 1999. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 1999 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised chargesheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 31 days in the year 1991, 10 days in 1994, 14 days in 1997, 130 days in 1998 and 52 days in 1999 and thus in his total service from 1991 to 1999 in 05 years as he had worked for 237 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 1999, the petitioner had merely worked for 52 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the yearwise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given musterroll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 1999 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1991 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to yearwise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 1999, he had remained unemployed and was not earning anything thereafter as such was entitled for full backwages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for backwages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this

Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka [4]** it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum-Processing Service Society Limited & Anr. [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be

existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—



Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in a calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in incapacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply

to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 237 days as per mandays chart on record and that the services of petitioner were disengaged in September, 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **fifteen years i.e.** demand notice was given on 8-6-2015. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals

reference under section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment (2016) *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1,2 and 4 are answered accordingly.

*Issue No. 3:*

24. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 74/2017  
Date of Institution : 23-02-2017  
Date of Decision : 04-09-2018

Smt. Guddi d/o Shri Jyoti Ram, r/o Village & P.O. Purthi, Tehsil Pangi, District Chamba,  
H.P. ..*Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D., Division Killar at Pangi, Tehsil Pangi, District  
Chamba, H.P. ..*Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Guddi d/o Sh. Jyoti Ram, Village & P.O. Purthi, Tehsil Pangi Distt. Chamba, H.P. during 2004 by the Executive Engineer, I&PH Division, Killar at Pangi, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 472 days during the years 1998 to 2004 and has raised her industrial dispute *vide* demand notice dated Nil (received in the office of the Labour Officer Chamba on 23-5-2015) after more than 11 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition revealed that petitioner/claimant had been initially engaged as daily wage beldar on musterroll basis in the year 1994 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purpose of calculation of 160 days in tribal area for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner. It is contended that

respondent had not followed procedure envisaged under Section 25-F of the Act while disengaging/retrenching service of petitioner. It is stated that petitioner is very poor having no source of income besides after termination of her service, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the service of petitioner had been terminated, respondent/department had re-engaged number of new workman from time to time and thereby respondent/department had not followed the principle of 'Last come First go' envisaged under section 25-G of the Act. It is further alleged that respondent/department had continuously retained juniors to petitioner who are still in service namely Bhag Dei who appointed in 1995, Jai Dass in 1998, Prakash Chand in 2001, Ram Dei in 2003, Dev Raj in 2004, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The petitioner claimed that she had spotless service record who had never been chargesheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no chargesheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2005 till the date of institution of present claim petition who was not gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Sections 25-F, 25-G and 25-H of Act and Article 14 and 16 of Constitution of India and accordingly, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. She further prayed for reinstatement in service *w.e.f.* month of October, 1998 alongwith backwages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2005 be counted for the purpose 160 days of continuous service and regularization of the service of petitioner *w.e.f.* 1-1-2004 having completed 8 years of service as per the policy of H.P. Govt. and to any other relief petitioner is entitled.

4. The respondent contested the claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits stated that petitioner had not worked with the respondent as such question of completion of 240 days did not arise. It is further denied that respondent had engaged persons junior to the petitioner or that intermittent breaks in service as claimed by petitioner had been given. It is emphatically denied that respondent had violated provisions of Act as claimed by petitioner. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner rather allegation of violation of principle of 'Last come First go' was asserted to have not been adhered to by respondent.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether termination of service of petitioner by the respondent during the year 2004 is/was legal and justified? ..*OPP*.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.  
Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: No
Relief	: Claim Petition is dismissed per operative part of award.

### REASONS FOR FINDINGS

#### *Issues no. 1, 2 and 3*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that there is no documentary evidence establishing that petitioner had ever worked with respondent more specifically as alleged in claim petition. Be it stated that no mandays chart has been produced or proved by either parties showing that petitioner had been factually engaged by respondent from 1994 to October, 2005. The plea of respondent as can be seen from reply on record reveal that petitioner was never engaged by respondent and therefore question of petitioner having completed 240 days and thereafter being retrenchment as claimed by respondent did not arise. As such, it was the petitioner who had to prove that she had worked under respondent for the period as alleged in claim petition and thereafter illegally terminated.

12. To prove her case petitioner has sworn in affidavit Ex. PW1/A reiterated her stand as maintained in the claim petition. The testimony of petitioner has not been corroborated by any co-worker who might have worked with her and as such uncorroborated testimony of petitioner cannot be relied so as to hold that petitioner was engaged on musterroll on 1994 as claimed by petitioner rather respondent has specifically denied relationship of petitioner being employee of respondent at any point of time. RW1 has repudiated claim of the petitioner in entirety by tendering mandays chart Ex. RW1/B. Cross-examination of RW1 reveals that according to record available in the office petitioner had neither been engaged nor worked under HPPWD Division Killar.

13. Ld. Counsel for the petitioner has contended that since reference has been received from appropriate govt. it necessarily follows that some conciliation proceedings had taken place before Conciliation Officer followed by submission of failure report under section 12(4) of the Act consequent upon which reference has been received which establishes existence of industrial dispute existed *inter-se* parties. On the other hand, Ld. Dy. D.A. for the State has contended that even in proceedings before the Conciliation Officer similar stand had been taken *i.e.* respondent having not been engaged petitioner at any point of time. In such like situation when petitioner alleged that conciliation proceedings which ended in failure report, the best evidence *qua* petitioner having been engaged could be established by producing reply filed by the respondent before

Conciliation Officer Chamba which has not been done in this case. In absence of the same by withholding best evidence available with the petitioner, an adverse inference has been drawn against the petitioner's claim. Accordingly, when petitioner has failed to prove to have worked with the respondent, it was not necessary for the respondent to have resorted to procedure envisaged for retrenchment under Section 25-F of the Act *i.e.* issuance of one month notice or compensation in lieu thereof. In view of foregoing respondent is held to have not violated provisions of Sections 25-G and 25-H of the Act as petitioner failed to prove having been engaged by respondent as discussed in foregoing paragraphs. Accordingly, issue No. 1 is answered in negative holding that respondent has not terminated service of petitioner in the month of October, 2005 & has thus not violated Section 25-F, 25-G and 25-H of the Act and for said reason, petitioner is not entitled for any consequential service benefits as claimed. Issue No.1 is thus answered in negative. In so far as issue No. 3 *qua* maintainability of claim petition, suffice would be to state here that when petitioner had not been engaged by respondent at any point of time as discussed in foregoing paras, the petition so moved could not be stated to be maintainable. This issue is answered in affirmative against the petitioner in favour of respondent. All the issues stated above are decided against petitioner and in favour of respondent.

*Issue No. 4:*

14. As has been discussed in foregoing paras that petitioner was not engaged by the respondent, the plea of claim petition being bad on account of delay and laches does not arise and issue No. 4 is answered in negative in favour of petitioner and against respondent.

*Relief:*

15. As a sequel to my findings on foregoing issues No. 1 to 4, the instant claim petition fails and the same is hereby dismissed, leaving the parties to bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 204/2016  
Date of Institution : 26-03-2016  
Date of Decision : 04-09-2018

Smt. Sheela w/o Shri Prem Raj, r/o Village Kufa, P.O. Killar, Tehsil Pangi, District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, Killar Division, I&PH/H.P.P.W.D., Killar (Pangi), District Chamba, H.P. ...Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Sheela w/o Shri Prem Raj, r/o Village Kufa, P.O. Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 by the Executive Engineer, Killar Division, I. & P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages and has raised her industrial dispute after 8 years *vide* demand notice dated 24-9-2012, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster-roll basis in the year 1994 who continuously worked till September, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Gurdev who appointed in 1996, Man



Dei in 1996, Sher Singh in 1996, Balwant in 1996, Dila Ram in 1996, Tek Chand in 1998, Bhag Dei in 2000, Ram Dei in 2003, Dev Raj in 2007 and Bameshwar Dutt in 2011. The claimant/petitioner claimed that she had spotless service record who never been chargesheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no chargesheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of September, 2004. She further prayed for reinstatement in service *w.e.f.* month of September, 2004 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 1-1-2004 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1996 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for chargesheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined

RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30-11-2017 for determination:—

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 24-9-2012 *qua* her termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPP*.
- (2) Whether termination of the services of petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? ..*OPP*.
- (3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 50,000/- per operative part of award.

### REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as dailywaged beldar by respondent on musterroll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1996 till September, 2004 whereas the claimant/petitioner alleges that she had worked from 1994 to September, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from August, 1996 and not from 1994. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In

the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1996 to September, 2004. She has also stated on oath that no notice under section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 90.5 days in the year 1996, 163 days in 1997, 13 days in 1998, 89 days in 2002, 87 days in 2003 and 48 days in 2004 and thus in her total service from 1996 to 2004 in 6 years as she had worked for 490 days. Be it noticed that petitioner had not worked for more than 160 days preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2004, the petitioner had merely worked for 48 days and thus immediately in preceding 12 calendar

months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the yearwise mandays of dailywaged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the yearwise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given musterroll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1996 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to yearwise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full backwages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self**

**employment merely differentiates the sources from which income is generated, the end use being the same’.** Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Samanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer

deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum- Processing Service Society Limited & Anr.* [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal

without examining the case in its proper perspective, keeping in view the power of the State Government under section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5 Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in a calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellante/employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered incapacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge

duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before



that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 6 years and actually worked for 490 days as per mandays chart on record and that the services of petitioner were disengaged in 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** i.e. demand notice was given on 24-9-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 3 are answered accordingly.

*Issue No. 4:*

24. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 340/2016  
Date of Institution : 26-05-2016  
Date of Decision : 04-09-2018

Smt. Shumo Devi d/o Shri Sumant, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, IPH Division Pangi, District Chamba, H.P. ..Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Shumo Devi d/o Sh. Sumant, Village Thandal, P.O. Purthi Tehsil Pangi, Distt. Chamba, H.P. during 11/1997 by the Executive

Engineer, IPH Division Pangi, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 213.5 days during the year 1995 to 1997 and has raised her industrial dispute *vide* demand notice dated 28-2-2012 after more than 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year 1995 to 1997 and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1995 who continuously worked till October, 2002 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Gurdev who appointed in 1996, Man Dei in 1996, Sher Singh in 1996, Balwant in 1996, Dila Ram in 1996, Tek Chand in 1998, Bahg Dei in 2000, Ram Dei in 2003, Dev Raj in 2007 and Bameshwar Dutt in 2011. The claimant/petitioner claimed that she had spotless service record who never been chargesheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no chargesheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2002 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2002. She further prayed for reinstatement in service *w.e.f.* month of October, 2002 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1995 to October, 2002 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 1-1-2002 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 1997 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No. 10 are stated to have engaged as per direction of the Labour Court-cum- Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come First go'. It is also contended that if petitioner had been terminated in 1997 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for chargesheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30-11-2017 for determination:—

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 28-2-2012 *qua* her termination of service during November, 1997 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.
- (2) Whether termination of services of petitioner by the respondent during November, 1997 is/was illegal and unjustified as alleged? ..OPP.
- (3) If issue No.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 20,000/- per operative part of award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1995 till June, 1997 whereas the claimant/petitioner alleges that she had worked from 1995 to October, 2002. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged till June, 1997 and not upto October, 2002. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1995 to June, 1997. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in June, 1997 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised chargesheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to

Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after June, 1997. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 47.5 days in the year 1995, 105 days in 1996 and 50 days in 1997 and thus in her total service from 1995 to 1997 in 02 years as she had worked for 202½ days. Be it noticed that petitioner had not worked for more than 160 days preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 1997, the petitioner had merely worked for 50 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under section 25-B of Act and thus it was not at all required for respondent to have issued a notice under section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the yearwise mandays of dailywaged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the yearwise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given musterroll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after June, 1997 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford

opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to yearwise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in 1997, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the Learned

Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

**13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka [4] it was held by this Court as follows—**

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

**15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum- Processing Service Society Limited & Anr. [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—**



“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant backwages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the backwages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1997 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in a calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Ld. Counsel for the petitioner with the aid of above said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghbir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been

contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 202.5 days as per mandays chart on record and that the services of petitioner were disengaged in 1997 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **fourteen years i.e.** demand notice was given on 28-2-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing**

**Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 3 are answered accordingly.

*Issue No. 4:*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

K.K. SHARMA,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 540/2016  
Date of Institution : 23-08-2016  
Date of Decision : 04-09-2018

Smt. Bimla d/o Shri Bishan Chand, r/o Village Ganwas, P.O. Sural, Tehsil Pangi, District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. ..Respondent.

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Smt. Bimla d/o Sh. Bishan Dass, Village Ganwas, P.O. Sural Tehsil Pangi, Distt. Chamba H.P. during 9/2004 by the Executive Engineer, HPPWD Division, Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 194.5 days during the year 1991 to 2004 and has raised her industrial dispute *vide* demand notice dated 30-12-2011 after more than 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1991 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating

the reason for retrenchment besides no retrenchment compensation was paid to petitioner. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come First go' envisaged under section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Gurdev who appointed in 1996, Man Dei in 1996, Sher Singh in 1996, Balwant in 1996, Dila Ram in 1996, Tek Chand in 1998, Bahg Dei in 2000, Ram Dei in 2003, Dev Raj in 2007 and Bameshwar Dutt in 2011. The claimant/petitioner claimed that she had spotless service record who never been chargesheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no chargesheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back-wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. She further prayed for reinstatement in service *w.e.f.* month of October, 2004 alongwith back-wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1991 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 1-1-2001 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1991 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No. 10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for chargesheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether termination of service of petitioner by the respondent during September, 2004 is/was legal and justified as alleged? ..*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*  
Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 45,000/- per operative part of award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 4:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as dailywaged beldar by respondent on musterroll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be

adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1991 to September, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back-wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised chargesheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 28 days in the year 1991, 26 days in 1992, 54 days in 1997, 28 days in 1998, 57 days in 1999, 30 days in 2002, 59 days in 2003 and 88 days in 2004 and thus in her total service from 1991 to 2004 in 8 years as she had worked for 370 days. Be it noticed that petitioner had not worked for more than 160 days preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2004, the petitioner had merely worked for 88 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered



service of 160 days continuous service of one year envisaged under section 25-B of Act and thus it was not at all required for respondent to have issued a notice under section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the yearwise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the yearwise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given musterroll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1991 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to yearwise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in crossexamination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use**

**being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the Learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the

remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum- Processing Service Society Limited & Anr.* [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State

Government under section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in a calendar year and her termination was in violation of section 25-F of the I.D.Act- Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellante employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting

an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her

services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 370 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **sseven years** i.e. demand notice was given on 30-12-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 45,000/- (Rupees forty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

*Issue No. 4:*

24. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 45,000/- (Rupees forty five thousand only) to the petitioner in lieu of the

reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 75/2017  
Date of Institution : 23-02-2017  
Date of Decision : 04-09-2018

Shri Kishan Lal s/o Shri Chuni Lal, r/o Village Shour, P.O. Purthi, Tehsil Pangi, District  
Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, HPPWD/IPH Division Killar, Tehsil Pangi, District Chamba, H.P.  
..Respondent.

**Reference under section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Kishan Lal s/o Sh. Chuni Lal, Village Shour, P.O. Purthi, Tehsil Pangi, Distt. Chamba, H.P. during year 1994, by the Executive Engineer, HPPWD/IPH Division, Killar at Pangi, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 87 days during the year 1994 and has raised his industrial dispute *vide* demand notice dated 21-10-2015 after more than 21 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and

justified? If not, keeping in view of working period as mentioned above and delay of more than 21 years in raising the industrial dispute, what amount of backwages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster-roll basis in the year 1990 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come First go' envisaged under section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Tek Chand who appointed in 1999, Baldev in 2000, Trilok Chand in 2002 and Hari Ram in 2003. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no chargesheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained un-employed ever since his illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full backwages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. He further prayed for reinstatement in service *w.e.f.* month of October, 2005 alongwith backwages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1990 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2000 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon



the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come First go'. It is also contended that if petitioner had been terminated in 1994 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for chargesheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for backwages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether termination of service of petitioner by the respondent during the year 1994 is/was legal and justified? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed

Relief

: Petition is partly allowed awarding lump-sum compensation of Rs. 10,000/- per operative part of award.

## REASONS FOR FINDINGS

*Issues No. 1, 2 and 4:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on musterroll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from July, 1994 till October, 1994 whereas the claimant/petitioner alleges that he had worked from 1990 to October, 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from July, 1994 till October, 1994 and not from 1990 upto October, 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and backwages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from July, 1994 to October, 1994. He has also stated on oath that no notice under section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full backwages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October, 1994 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised chargesheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1994. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 87 days in the year 1994 and thus in his total service from July, 1994 to October, 1994 in 01 year as he had worked for 87 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 1994, the petitioner had merely worked for 87 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under section 25-B of Act and thus it was not at all required for respondent to have issued a notice under section 25-F of Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the yearwise mandays of dailywaged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the yearwise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 1994 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in July, 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders

of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. PW1/B . This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to yearwise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in October, 1994, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the Learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate

government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

**13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4]** it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Samanta and Ors. v. Union of India and Ors. (*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

**15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum- Processing Service Society Limited & Anr. [5]** this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the

demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1994 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5 Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in a calendar year and her termination was in violation of section 25-F

of the I.D. Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Ld. Counsel for the petitioner with the aid of above said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghbir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and

laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 01 year and actually worked for 87 days as per mandays chart on record and that the services of petitioner were disengaged in October, 1994 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **twenty one years i.e.** demand notice was given on 21-10-2015. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this



case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment (2016) *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 10,000/- (Rupees ten thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

*Issue No. 3:*

24. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 10,000/- (Rupees ten thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 574/2016  
Date of Institution : 24-08-2016

Date of Decision : 04-09-2018

Shri Mahesh Chand s/o Shri Bajeet Chand, r/o Village Kuthah, P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P. *..Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Mahesh Chand s/o Sh. Bajeet Chand, Village Kuthah, P.O. Dharwas, Tehsil Pangi, Distt. Chamba, H.P. during 10/1999 by the Executive Engineer, HPPWD Division, Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 362 days during the years 6/1994 to 10/1999 and has raised his industrial dispute *vide* demand notice dated Nil (received in the office of Labour Officer Chamba on 4-7-2012) after more than 12 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year mentioned as above and delay of more than 11 years in raising the industrial dispute, what amount of backwages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster-roll basis in the year 1994 who continuously worked till October, 2001 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of

petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Tek Chand who appointed in 1999, Baldev in 2000, Trilok Chand in 2002, Hari Ram in 2003, Dev Raj in 2004, Sher Singh in 2011, Raj Kumar in 2011 and Bameshwar Dutt in 2011. The claimant/petitioner claimed that he had spotless service record who never been chargesheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2001 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of October, 2001. He further prayed for reinstatement in service w.e.f. month of October, 2001 alongwith backwages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2001 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01-01-2002 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come First go'. It is also contended that if petitioner had been terminated in 1999 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for chargesheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for backwages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed

evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether termination of service of petitioner by the respondent during October, 1999 is/was legal and justified as alleged? ..*OPP*.
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 30,000/- per operative part of award.

#### REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on musterroll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1994 till October, 1999 whereas the claimant/petitioner alleges that he had worked from 1994 to October, 2001. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged till October, 1999 and not upto October, 2001. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with

a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangti Sub-Division Chamba District and remained engaged from 1994 to October, 1999. He has also stated on oath that no notice under section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October, 1999 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised chargesheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangti Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangti Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 81 days in the year 1994, 21 days in 1995, 31 days in 1997, 156 days in 1998 and 73 days in 1999 and thus in his total service from 1994 to 1999 in 05 years as he had worked for 362 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 1999, the petitioner had merely worked for 73 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service

of one year envisaged under Section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the yearwise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after, October, 1999 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to yearwise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in October, 1999, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use**

**being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the Learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka** [4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing

the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of *Ajaib Singh v. The Sirhind Co-Operative Marketing-cum-Processing Service Society Limited & Anr.* [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State



Government under section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5 Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in a calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947-Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed or that employees has superannuated or going to retire shortly and no period is left to his credit or where workman has been rendered incapacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting

an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her

services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 362 days as per mandays chart on record and that the services of petitioner were disengaged in October, 1999 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years** i.e. demand notice was given on 4-7-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 30,000/- (Rupees thirty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

*Issue No. 3:*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 30,000/- (Rupees thirty thousand only) to the petitioner in lieu of the

reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 598/2015  
Date of Institution : 19-12-2015  
Date of Decision : 04-09-2018

Smt. Parwati w/o Shri Bachan Singh, r/o Village Chahuras, P.O. Kothi, Tehsil Pangi,  
District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, Killar Division, HPPWD, Killar, Tehsil Pangi, District Chamba,  
H.P. *..Respondent.*

### Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Parwati w/o Shri Bachan Singh, r/o Village Chahuras, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 06-10-2011 regarding her alleged illegal termination of service during

October, 2005 suffers from delay and laches? If not, Whether termination of the Smt. Parwati w/o Shri Bachan Singh, r/o Village Chahuras, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during October, 2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on musterroll basis in the year 1993 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of 'Last come First go' envisaged under section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Gurdev who appointed in 1996, Man Dei in 1996, Sher Singh in 1996, Balwant in 1996, Dila Ram in 1996, Tek Chand in 1998, Bahg Dei in 2000, Ram Dei in 2003, Dev Raj in 2007 and Bameshwar Dutt in 2011. The claimant/petitioner claimed that she had spotless service record who never been chargesheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no chargesheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. She further prayed for reinstatement in service *w.e.f.* month of October, 2005 alongwith back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1993 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 1-1-2003 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 2005 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come First go'. It is also contended that if petitioner had been terminated in 2005 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for chargesheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for backwages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether industrial dispute raised by petitioner *vide* demand notice dated 6-10-2011 *qua* his termination of service during October, 2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..OPP.
- (2) Whether termination of service of petitioner by the respondent during October, 2005 is/was legal and justified? ..OPP.
- (3) If issue No.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.

## Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 75,000/- per operative part of award.

## REASONS FOR FINDINGS

*Issues No. 1, 2 and 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on musterroll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1998 till October, 2005 whereas the claimant/petitioner alleges that she had worked from 1993 to October, 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1998 and not from 1993. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and backwages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1998 to October, 2005. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full backwages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 2005 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised chargesheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under

Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2005. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 51 days in the year 1998, 92 days in 2000, 95 days in 2001, 133 days in 2002, 100 days in 2003, 74 days in 2004 and 73 days in 2005 and thus in her total service from 1998 to 2005 in 7 years as she had worked for 618 days. Be it noticed that petitioner had not worked for more than 160 days preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2005, the petitioner had merely worked for 73 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under section 25-B of Act and thus it was not at all required for respondent to have issued a notice under section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the yearwise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/B the yearwise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2005 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers



having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in October, 2005, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that „**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**’. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned

Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

**13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

**14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka [4]** it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

**15. In the case of Ajaib Singh v. the sirhind Co-Operative Marketing-cum-Processing Service Society limited & anr. [5]** this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld.

Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5 Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in a calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in incapacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghbir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance

of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 07 years and actually worked for 618 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2005 who worked as non-skilled worker and had raised industrial dispute by issuance of demand notice after about **six years i.e.** demand notice was given on 6-10-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back-wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**.

Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment (2016) *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 3 are answered accordingly.

*Issue No. 4:*

24. On the plea of non-maintainability of the claim petition under section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement, back-wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 78/2016  
Date of Institution : 20-02-2016  
Date of Decision : 04-09-2018

Shri Jag Dev s/o Shri Nanak Chand, r/o Village and Post Office Purthi, Tehsil Pangi,  
District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I.P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba,  
H.P. ..Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Shri Jag Dev s/o Shri Nanak Chand, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 28-5-2012 regarding his illegal termination of service during August, 1999 suffers from delay and laches? If not, Whether termination of the services of Shri Jag Dev s/o Shri Nanak Chand, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during August, 1999 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of backwages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on musterroll basis in the year 1994 who continuously worked till October 1999 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner. It is contended that respondent had not followed the provisions of Section 25-F of the Act while

disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Sher Singh who appointed in 1996, Gurdev in 1996, Man Dei in 1994, Balwant in 1996, Dila Ram in 1996, Ram Dei in 2003, Dev Raj in 2007, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that he had spotless service record who never been chargesheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no chargesheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 1999 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 1999. He further prayed for reinstatement in service *w.e.f.* month of October, 1999 alongwith backwages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October 1999 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2002 having completed 8 years of service and as per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No. 10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come First go". It is also contended that if petitioner had been terminated in 1999 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for chargesheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for backwages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.



6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30-11-2017 for determination:—

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 28-5-2012 *qua* his termination of service during August, 1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ..*OPR*.
- (2) Whether termination of the services of petitioner by the respondent during August, 1999 is/was illegal and unjustified as alleged? ..*OPP*.
- (3) If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 70,000/- per operative part of award.

#### REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as dailywaged beldar by respondent on musterroll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1994 till August 1999 whereas the claimant/petitioner alleges that he had worked from 1994 to October 1999. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record,

the only inference in such situation could be drawn is that petitioner had been factually engaged till August 1999 and not upto October 1999. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and backwages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from 1994 to August, 1999. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full backwages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in August, 1999 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised chargesheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent is not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 166 days in the year 1994, 138 days in 1995, 147 days in 1996, 138 days in 1997, 127 days in 1998 and 23 days in 1999 and thus in his total service from 1994 to 1999 in 06 years as he had worked for 739 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with

regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 1999, the petitioner had merely worked for 23 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the yearwise mandays of dailywaged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the yearwise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after, August 1999 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to yearwise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in August 1999, he had remained un-employed and was not earning anything thereafter as such was entitled for full backwages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that

**"term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same"**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full backwages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for backwages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the Learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. Vs. Telecom District Manager, Karnataka** [4] it was held by this Court as follows—

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. Vs Union of India and Ors.

(*supra*) 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of *Ajaib Singh Vs. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.* [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the backwages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division

Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. *Ld. Dy. D.A.* representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by *ld. counsel*, *ld. AR* for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by *ld. counsel* for petitioner, *ld. Dy. D.A.* has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in a calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947-Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by *ld. Dy. D.A.* for the State, *ld. counsel* for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul Vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered incapacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge

duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121, Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh Vs Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another Vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before

that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 739 days as per mandays chart on record and that the services of petitioner were disengaged in August, 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **thirteen years i.e.** demand notice was given on 28-5-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 70,000/- (Rupees seventy thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

*Issue No. 3:*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the



reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 339/2016  
Date of Institution : 26-05-2016  
Date of Decision : 04-09-2018

Shri Vidya Sagar s/o Shri Suraj Bhan, r/o Village Thandal, P.O. Purthi, Tehsil Pangi,  
District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I&PH Division Pangi at Killar, Tehsil Pangi, District Chamba,  
H.P. ..Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Vidya Sagar s/o Shri Suraj Bhan, Village Thandal, P.O. Purthi, Tehsil Pangi, Distt. Chamba, H.P. during 10/2004 by the Executive Engineer I&PH Division, Killar (Pangi), Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 539 days during the year 1999 to 2004 and has raised his industrial dispute *vide* demand notice dated 27-4-2012 after more than 7

years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned above and delay of more than 7 years in raising the industrial dispute, what amount of backwages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as dailywage beldar on musterroll basis in the year 1999 who continuously worked till October, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of "Last come First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Dev Raj who appointed in 2007, Raj Kumar in 2011 and Sher Singh in 2011. The claimant/petitioner claimed that he had spotless service record who never been chargesheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no chargesheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full backwages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2004. He further prayed for reinstatement in service *w.e.f.* month of October, 2004 alongwith backwages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1999 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2007 having completed 8 years of service and per the policy of H.P. Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1999 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will

and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come First go". It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for chargesheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for backwages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether termination of service of petitioner by the respondent during October, 2004 is/was legal and justified? ..OPP.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (4) Whether claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs. 65,000/- per operative part of award.

## REASONS FOR FINDINGS

*Issues No. 1 to 3*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as dailywaged beldar by respondent on musterroll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1999 till September 2004 whereas the claimant/petitioner alleges that he had worked from 1994 to October 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1999 till September, 2004 and not from 1994 upto October 2004. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and backwages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from 1999 to September 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised chargesheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically

admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent is not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangti Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 80 days in the year 1999, 75 days in 2000, 84 days in 2001, 113 days in 2002, 114 days in 2003 and 73 days in 2004 and thus in his total service from 1999 to 2004 in 06 years as he had worked for 539 days. Be it noticed that petitioner had not worked for more than 160 days in preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 2004, the petitioner had merely worked for 73 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the yearwise mandays of dailywaged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/B the yearwise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after, September 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no. 10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1999 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India Vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone

through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to yearwise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **"term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same"**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full backwages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back-wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the Learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors Vs Telecom District Manager, Karnataka [4] it was held by this Court as follows—**

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh Vs. The Sirhind Co-operative Marketing-Cum- Processing Service Society Limited & Anr. [5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back-wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back-wages instead of full back wages.....” (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another Vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in a calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the



workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947-Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief**".

21. Repudiating the arguments by Id. Dy. D.A. for the State, Id. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul Vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in incapacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation**. Id. Counsel for the petitioner with the aid of above said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Id. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Id. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652**. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Id. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh Vs. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another Vs. Chaman Singh** relied by Id. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held

on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs. 1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 539 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years i.e.** demand notice was given on 27-4-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back-wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 65,000/- (Rupees sixty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 3 are answered accordingly.

*Issue No. 4:*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 65,000/- (Rupees sixty five thousand only) to the petitioner in lieu of the reinstatement, back-wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Kangra at Dharamshala, H.P.*

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 263/ 2015

Sh. Balvir s/o Sh. Duni Chand, r/o Village Kathoun, P.O. Panjalag, Tehsil Joginder Nagar,  
District Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. (B&RR) Division Joginder Nagar, District Mandi, H.P. *..Respondent.*

06-09-2018 Present : None for the petitioner.  
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-  
(K.K.SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Kangra at Dharamshala, H.P.

06-09-2018 Present : None for the petitioner.  
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner or his Ld. Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:  
06-09-2018

Sd/-  
( K.K.SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 156/2016  
Date of Institution : 17-03-2016  
Date of Decision : 13-09-2018

Shri Tilak Raj s/o Shri Ghunghar Ram, r/o Village Dhar, P.O. Khundel, Tehsil and District Chamba, H.P. *...Petitioner.*

*Versus*

The Executive Engineer, I.&P.H. Division Chamba, District Chamba, H.P. *..Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, AR  
 For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

1. “Whether alleged time to time termination of services of Shri Tilak Raj s/o Shri Ghunghar Ram, r/o Village Dhar, P.O. Khundel, Tehsil and District Chamba, H.P. during the year 1998 to April, 2006 by the Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P., who had worked as beldar on daily wages basis and has raised his industrial dispute after more than 7 years *vide* demand notice dated 30-03-2014, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period and delay of more than 7 years in raising the industrial dispute, what amount of backwages, seniority, past service benefits the above worker is entitled to from the above employer/management?”
2. “Whether the demand of regularization of daily wagger services raised *vide* demand notice dated 30-03-2014 after more than 7 years of Shri Tilak Raj s/o Shri Ghunghar Ram, r/o Village Dhar, P.O. Khundel, Tehsil and District Chamba, H.P. to be fulfilled by Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P. from the date of his junior workmen have been regularized, as alleged by the worker, is legal and justified? If not, what arrear of wages and consequential relief of service benefits the above worker is entitled to from the above employer/management?”
2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.
3. Averments made in the claim petition reveal that petitioner had been engaged in the month of April 1998 on musterroll basis by respondent as dailywaged beldar who continuously worked till October 2013 when his services had been regularized after about 16 years in the month of October 2013. The grievance of petitioner as can be gathered from the claim petition reveal that respondent had given fictional/artificial breaks to petitioner by allowing to him work only for about 18 days in a month so that petitioner did not complete 240 days and could get benefit of Section 25-B of Industrial Disputes Act, 1947 (hereinafter called the "Act" for brevity). It is alleged that cessation of work for period of intermittent break for 12 to 13 days in each month from 1998 to April 2006 for about nine years had been given due to which petitioner could not complete 240 days as stated above. Accordingly, having not completed 240 days in a year for the purpose of regularization of daily wage service the petitioner was not put into work charge cadre. It is alleged that service of petitioner has been interrupted by respondent by allowing him to allocate work for 18 days in a month whereas other junior workmen engaged on muster roll much after the petitioner had been given regular work in a month particularly co-workmen who had been engaged in the years 1998 and 1999 respectively. Thus, while allocating to work to junior and not allocating work to petitioner clearly established existence of sufficient budget and work and thus violated Section 25-G of Act which also amounts to unfair labour practice. It is claimed that junior workmen whose names had been reflected in Annexure P1 were junior to petitioner but were regularized after eight years and had completed 240 days in each year but contrarily due to break in service petitioner could not be regularized. It is claimed that all these workmen have been allowed retrospective

regularization on completion of eight years of service in view of judgment of Hon'ble High Court of H.P. titled as Rakesh Kumar Vs. State of H.P. and Ors. It is alleged that without any rhyme or reason, respondent had given break in service to petitioner discriminating against other co-workmen who were junior to petitioner and given work for full month. Accordingly, petitioner prays that period of intermittent illegal/artificial breaks given by respondent from time to time between 1998 to April 2006 be declared illegal and unjustified and respondent be directed to count the period as continuous service for the purpose of 240 days in each calendar year from 1998 to 2006 as stated above besides back wages and other consequential benefits and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been working continuously on daily wage basis but was not given break intermittently from 1998 to 2006 deliberately as claimed by petitioner rather after 2006 as stated above petitioner had been given work regularly. It is emphatically denied that fictional breaks had been given to petitioner deliberately so that he could complete 240 days besides as and when petitioner completed requisite criteria for regularization as per government policy he was regularized in the month of October 2013. It has been denied that any junior workmen to the petitioner had been regularized in service rather only those workmen were regularized by respondent/department who had continuously worked with the respondent and fulfilled criteria for regularization as per government policy for regularization besides no provision of the Act as alleged by petitioner was violated by respondent. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of letter dated 27-4-2006 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copy of order dated 22-4-2013 Ex. PW1/D, copy of letter dated 19-8-2013 Ex. PW1/E, copy of regularization order dated 21-1-2014 Ex. PW1/F, copy of joint representations dated 13-4-2004 & 13-4-2004 Mark-A1 and Mark-A2, list of junior Mark-A3, copy of Divisional level seniority lists of junior dailywagers Mark-A4/Ex. P1 & Mark-A5/Ex. P2, copy of joint representation dated 22-4-2008 Mark-A6, copy of representation dated 17-5-2013 Mark A7 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kapur, the then Executive Engineer, IPH Division Chamba as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart of petitioner and other workers Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30-11-2017 for determination:—

- (1) Whether time to time termination of services of petitioner by respondent during year 1998 to April, 2006 is/was illegal and unjustified as alleged. If so, its effect? ..OPP.
- (2) Whether the demand raised *vide* demand notice dated 30-3-2014 by the petitioner regarding regularization of his dailywages services from the date of regularization of is juniors by the respondents/department is illegal and unjustified as alleged. If so, its effect? ..OPP.
- (3) If issue No.1 and issue No.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.

- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (5) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.

#### Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Issue No. 5	: No
Relief	: Petition is partly allowed per operative part of award.

#### REASONS FOR FINDINGS

##### *Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the petitioner that he had been engaged by respondent on 1<sup>st</sup> April, 1998 who continuously worked till date but was regularized in October 2013. The grievance of petitioner remains two fold, firstly with regard to time to time break given from 1<sup>st</sup> April, 1998 to April, 2006 by respondent deliberately with the object that petitioner did not complete 240 days so as to meet requirement of Section 25-B of Act and secondly after having been engaged in 1998 was liable to be regularized in 2007 as per policy of the government but due to break in service from 1998 to April, 2006 he could not complete requisite criteria for regularization for government policy. As such, delay in regularization in October 2013 on account of intermittent break has also been challenged. To appreciate controversy in issue evidence adduced by parties in support of their respective claims needs to be gone through but at this stage before proceeding further, it would be apt to refer to documentary evidence.

12. Ex. P2 is the seniority list revealing workers engaged in the years 1998 to 2000 to have been regularized by respondent but were certainly junior to petitioner. This document further shows that those workmen who had been engaged later than petitioner were not given intermittent break in service rather had been given adequate work. Ex. PW1/C is the mandays chart dealing with month-wise working days of petitioner from 1st September, 1998 to 31-10-2013. A bare glance at mandays chart Ex. PW1/C would show that petitioner had worked for 103 days in the year 1998, 65 days in 2001, 139 days in 2002, 205 days in 2003, 195 days in 2004, 171 days in 2005, 307 days in 2006, 346 days in 2007, 347 days in 2008, 347 days in 2009, 344 days in 2010, 357 days in 2011, 343 days in 2012 and 262 days in 2013. This document clearly shows that petitioner had been given full month work from 1-4-2006 and prior to it petitioner was engaged only for 17 to 19 days in each month which further strengthens plea of petitioner that breaks in service prior to April, 2006 had been deliberately given by respondent as other co-workmen as discussed above had been given work for full month during that period although they were engaged in 1999 whereas petitioner had been engaged from 1st April, 1998. The fact that respondent had given deliberate intermittent breaks to petitioner can be safely gathered from Ex. P2 as co-workmen shown in it were admittedly junior to petitioner who had been regularized in 2007. It further finds support from cross-examination of RW1 Shri Dinesh Kapur, Executive Engineer, IPH Chamba as contesting respondent who revealed that coworkers reflected in Ex. P2 at Sl. Nos.1 to 87 had been

regularized and were junior to petitioner and thus claim of petitioner gets further strengthened not only from cross-examination of RW1 but also from documentary evidence establishing that junior to petitioner had not been given intermittent breaks who had been regularized in 2007 whereas petitioner has been regularized in October, 2013 who had joined much prior to these co-workmen as stated above.

13. Ld. Dy. D.A. for the respondent has vehemently argued that petitioner is working ever since April, 1998 whose service had been regularized in October, 2013 and the delay in regularization took place due to break in service as stated above. On the other hand, Ld. Authorized Representative for petitioner has denied benefit of seniority and continuity in service to which he was entitled but for he was denied the regularization from initial engagement by respondent under the garb of intermittent break which has been established by petitioner by adducing reliable evidence on this score. Certainly, when intermittent breaks had been given to petitioner from his initial engagement till April, 2006 the delay in regularization was obvious as it has been established on record that intermittent breaks were deliberately given to petitioner prior to April, 2006 rather after instructions issued *vide* letter dated 27-3-2006 Ex. PW1/B govt. of H.P. to respondent and all other field staff to give work to daily wage beldar for full month. As such, I find no substance in arguments advanced by Ld. Dy.D.A. for respondent that intermittent break was not deliberate and accordingly, it is held that intermittent breaks till April, 2006 as stated above were deliberately given so that petitioner did not complete 240 days in a year so as to avail benefit of Section 25-B of Act.

14. In so far as petitioner having not been gainfully employed during intermittent break as stated above, suffice would be to state here that petitioner in his cross-examination has specifically admitted that he had cultivable land and thus had livelihood there from. As such, it cannot be stated that petitioner had not remained gainfully employed during intermittent break period I am supported by judgment of Hon'ble Apex Court in **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '*term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same*'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled backwages. Accordingly, issue No. 1 is answered in affirmative in favour of petitioner and against the respondent.

15. In so far as claim of petitioner for regularization after 10 years of service as raised in his demand notice dated 30-3-2014 is concerned, it has been discussed in foregoing paras that due to deliberate breaks petitioner could not be regularized in the year 2007 as other co-workmen who were junior to him and thus petitioner too would be entitled for regularization after 10 years of service from his initial engagement. Merely because petitioner had been regularized is not sufficient to dislodge petitioner from claim for being regularized from his initial engagement from the year 1998 as disparity had been created by respondent in regularizing co-workmen who were junior to him under the garb of intermittent breaks. Be it noticed that respondent had sufficient work and funds and there was no reason for respondent to have not given work to petitioner for full month moreso when other co-workmen had been given work whose service had been regularized and thus petitioner too would be entitled for regularization like his colleagues *i.e.* co-workmen as has come in evidence from his initial engagement in service after requisite period of service required under the government policy for regularization. Be it noticed that respondent's document



which is coming from custody of petitioner Ex. PW1/E dated 19-8-2013 with regard to references No. 212/12 (Tilak Raj), 217/12 (Pawan Kumar), 318/12 (Vijay Kumar), 232/12 (Kewal Krishan), 213/12 (Raj Kumar), 214/12 (Shamsher Singh), 215/12 Hem Raj & 216/12 (Ajay Kumar), all the workmen have been regularized as law department opined that workmen had been held entitled to seniority and continuity in service from the date of their initial engagement except back wages. Ex. PW1/F is the order dated 21-1-2014 of Superintending Engineer, IPH Circle Chamba giving effect to letter dated 19-8-2013. Ex. PW1/F further shows that date of deemed regularization *w.e.f.* 20-10-2007 as Chattro Keso Ram, Nidhia Ram & Gurditta which shows that all these workmen had been regularized after 10 years of service. Issue No. 2 is answered in affirmative in favour of petitioner and against respondent. Issue No. 3 is answered in favour of petitioner as discussed above. All these issues are answered accordingly.

*Issue No. 4:*

16. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Issue No. 5:*

17. In so far as plea of delay and laches raising the dispute by petitioner is concerned, suffice would be to state here that petitioner had been continuously working with respondent after having been engaged from 1st April, 1998 till his regularization *i.e.* October 2013 and the intermittent breaks which had been given from 1st April 1998 to April, 2006 were agitated by petitioner by making representations as can be gathered from para No. 8 of claim petition as also finds mentioned in affidavit Ex. PW1/A which shows that petitioner had made several requests with the respondent and thereafter matter had got into notice of government by trade union and thereafter under instructions *vide* letter No. IPH(A)2(B)1-2-2003-Part dated 27th March, 2006 Ex. PW1/B had been issued to all the Executive Engineers I&PH Department with directions to give work for full month basis. As such, after instructions from the government, petitioner had given regular work and thus delay in raising demand notice in 2014 cannot be stated to have remained unexplained as petitioner had been given work for full month after the instructions of government as stated above. Thus, the delay is satisfactorily explained which could not be stated to be deliberate on account of negligence of petitioner. Moreover, respondent has not disputed issuance of instructions to field staff to PWD/IPH for giving full work after March 2006. As such, claim petition could not be stated to be barred by delay and laches as pleaded by respondent. This issue is answered in favour of petitioner and against the respondent.

*Relief:*

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement till April 2006 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back-wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing dailywagers as framed by State Govt. and operative from time to time, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 150/2016  
Date of Institution : 17-03-2016  
Date of Decision : 13-09-2018

Shri Dumnu s/o Shri Lachho, r/o Village and Post Office Kohladi, Tehsil and District  
Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I.&P.H. Division Chamba, District Chamba, H.P. *..Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

1. “Whether alleged time to time termination of services of Shri Dumnu s/o Shri Lachho, r/o Village and Post Office Kohladi, Tehsil and District Chamba, H.P. during the year 1996 to April, 2006 by the Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P., who had worked as beldar on daily wages basis and has raised his industrial dispute after more than 7 years *vide* demand notice dated 30-03-2014, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period and delay of more than 7 years in raising the industrial dispute, what amount of backwages, seniority, past service benefits the above worker is entitled to from the above employer/management?”

2. Whether the demand of regularization of daily wage services raised *vide* demand notice dated 30-03-2014 after more than 7 years of Shri Dumnu s/o Shri Lachho, r/o Village and Post Office Kohladi, Tehsil and District Chamba, H.P. to be fulfilled by Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P. from the date of his junior workmen have been regularized, as alleged by the worker, is legal and justified? If not, what arrear of wages and consequential relief of service benefits the above worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Averments made in the claim petition reveal that petitioner had been engaged in the month of January 1996 on musterroll basis by respondent as dailywaged beldar who continuously worked till October 2013 when his services had been regularized after about 18 years in the month of October 2013. The grievance of petitioner as can be gathered from the claim petition reveal that respondent had given fictional/artificial breaks to petitioner by allowing to him work only for about 18 days in a month so that petitioner did not complete 240 days and could get benefit of Section 25-B of Industrial Disputes Act, 1947 (hereinafter called the "Act" for brevity). It is alleged that cessation of work for period of intermittent break for 12 to 13 days in each month from 1996 to April 2006 for about nine years had been given due to which petitioner could not complete 240 days as stated above. Accordingly, having not completed 240 days in a year for the purpose of regularization of daily wage service the petitioner was not put into work charge cadre. It is alleged that service of petitioner has been interrupted by respondent by allowing him to allocate work for 18 days in a month whereas other junior workmen engaged on muster roll much after the petitioner had been given regular work in a month particularly co-workmen who had been engaged in the years 1996, 1997, 1998 and 1999 respectively. Thus, while allocating to work to junior and not allocating work to petitioner clearly established existence of sufficient budget and work and thus violated Section 25-G of Act which also amounts to unfair labour practice. It is claimed that junior workmen whose names had been reflected in Annexure-P1 were junior to petitioner but were regularized after eight years and had completed 240 days in each year but contrarily due to break in service petitioner could not be regularized. It is claimed that all these workmen have been allowed retrospective regularization on completion of eight years of service in view of judgment of Hon'ble High Court of H.P. titled as Rakesh Kumar Vs. State of H.P. and Ors. It is alleged that without any rhyme or reason, respondent had given break in service to petitioner discriminating against other co-workmen who were junior to petitioner and given work for full month. Accordingly, petitioner prays that period of intermittent illegal/artificial breaks given by respondent from time to time between 1996 to April 2006 be declared illegal and unjustified and respondent be directed to count the period as continuous service for the purpose of 240 days in each calendar year from 1996 to 2006 as stated above besides back wages and other consequential benefits and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been working continuously on daily wage basis but was not given break intermittently from 1996 to 2006 deliberately as claimed by petitioner rather after 2006 as stated above petitioner had been given work regularly. It is emphatically denied that fictional breaks had been given to petitioner deliberately so that he could complete 240 days besides as and when petitioner completed requisite criteria for regularization as per government policy he was regularized in the month of October 2013. It has been denied that any junior workmen to the petitioner had been regularized in service rather only those workmen were regularized by respondent/department who had continuously worked with the respondent and fulfilled criteria for regularization as per government policy for regularization besides no provision of the Act as alleged by petitioner was violated by respondent. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of letter dated 27-4-2006 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copy of order dated 22-4-2013 Ex. PW1/D, copy of letter dated 19-8-2013 Ex. PW1/E, copy of regularization order dated 21-1-2014 Ex. PW1/F, copy of joint representations dated 13-4-2004 & 13-4-2004 Mark-A1 and Mark-A2, list of junior Mark-A3, copy of Divisional level seniority lists of junior daily wagers Mark-A4/Ex. P1 & Mark-A5/Ex. P2, copy of joint representation dated 22-4-2008 Mark-A6, copy of representation dated 17-5-2013 Mark A7 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kapur, the then Executive Engineer, IPH Division Chamba as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart of petitioner and other workers Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-10-2017 for determination:—

- (1) Whether time to time termination of services of the petitioner by the respondent during year 1996 to April, 2006 is/was illegal and unjustified as alleged? ..OPP.
- (2) Whether the demand of regularization of daily wager service raised *vide* demand notice dated 30-3-2014 is legal and justified as alleged? ..OPP.
- (3) If issue No. 1 or No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? .. OPP.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (5) Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ..OPR.

Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: No
Issue No. 5	: No
Relief	: Petition is partly allowed per operative part of award.

#### REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the petitioner that he had been engaged by respondent on 1<sup>st</sup> January 1996 who continuously worked till date but was regularized in October 2013. The grievance of petitioner remains two fold, firstly with regard to time to time break given from

1<sup>st</sup> January 1996 to April 2006 by respondent deliberately with the object that petitioner did not complete 240 days so as to meet requirement of Section 25-B of Act and secondly after having been engaged in 1996 was liable to be regularized in 2007 as per policy of the government but due to break in service from 1996 to April, 2006 he could not complete requisite criteria for regularization for government policy. As such, delay in regularization in October, 2013 on account of intermittent break has also been challenged. To appreciate controversy in issue evidence adduced by parties in support of their respective claims needs to be gone through but at this stage before proceeding further, it would be apt to refer to documentary evidence.

12. Ex. P2 is the seniority list revealing workers engaged in the years 1996 to 2000 to have been regularized by respondent but were certainly junior to petitioner. This document further shows that those workmen who had been engaged later than petitioner were not given intermittent break in service rather had been given adequate work. Ex. PW1/C is the mandays chart dealing with month-wise working days of petitioner from 1st January, 1996 to 31-10-2013. A bare glance at mandays chart Ex. PW1/C would show that petitioner had worked for 323 days in the year 1996, 227 days in 1997, 179 days in 1998, 192 days in 1999, 196 days in 2000, 204 days in 2001, 206 days in 2002, 204 days in 2003, 205 days in 2004, 218 days in 2005, 317 days in 2006, 365 days in 2007, 364 days in 2008, 365 days in 2009, 365 days in 2010, 359 days in 2011, 364 days in 2012 and 276 days in 2013. This document clearly shows that petitioner had been given full month work from 1-4-2006 and prior to it petitioner was engaged only for 17 to 19 days in each month which further strengthens plea of petitioner that breaks in service prior to April 2006 had been deliberately given by respondent as other co-workmen as discussed above had been given work for full month during that period although they were engaged in 1996 whereas petitioner had been engaged from 1st January, 1996. The fact that respondent had given deliberate intermittent breaks to petitioner can be safely gathered from Ex. P2 as co-workmen shown in it were admittedly junior to petitioner who had been regularized in 2007. It further finds support from cross-examination of RW1 Shri Dinesh Kapur, Executive Engineer, IPH Chamba as contesting respondent who revealed that co-workmen reflected in Ex. P2 at Sl. Nos. 1 to 87 had been regularized and were junior to petitioner and thus claim of petitioner gets further strengthened not only from cross-examination of RW1 but also from documentary evidence establishing that junior to petitioner had not been given intermittent breaks who had been regularized in 2007 whereas petitioner has been regularized in October, 2013 who had joined much prior to these co-workmen as stated above.

13. Ld. Dy. D.A. for the respondent has vehemently argued that petitioner is working ever since January, 1996 whose service had been regularized in October 2013 and the delay in regularization took place due to break in service as stated above. On the other hand, Ld. Authorized Representative for petitioner has denied benefit of seniority and continuity in service to which he was entitled but for he was denied the regularization from initial engagement by respondent under the garb of intermittent breaks which has been established by petitioner by adducing reliable evidence on this score. Certainly, when intermittent breaks had been given to petitioner from his initial engagement till April 2006 the delay in regularization was obvious as it has been established on record that intermittent breaks were deliberately given to petitioner prior to April 2006 rather after instructions issued *vide* letter dated 27-3-2006 Ex. PW1/B govt. of H.P. to respondent and all other field staff to give work to daily wage beldar for full month. As such, I find no substance in arguments advanced by Ld. Dy.D.A. for respondent that intermittent break was not deliberate and accordingly, it is held that intermittent breaks till April, 2006 as stated above were deliberately given so that petitioner did not complete 240 days in a year so as to avail benefit of Section 25-B of Act.

14. In so far as petitioner having not been gainfully employed during intermittent break as stated above, suffice would be to state here that petitioner in his cross-examination has specifically admitted that he had cultivable land and thus had livelihood there from. As such, it cannot be stated

that petitioner had not remained gainfully employed during intermittent break period I am supported by judgment of Hon'ble Apex Court in **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '*term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same*'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled backwages. Accordingly, issue no.1 is answered in affirmative in favour of petitioner and against the respondent.

15. In so far as claim of petitioner for regularization after 10 years of service as raised in his demand notice dated 30-3-2014 is concerned, it has been discussed in foregoing paras that due to deliberate breaks petitioner could not be regularized in the year 2007 as other co-workmen who were junior to him and thus petitioner too would be entitled for regularization after 10 years of service from his initial engagement. Merely because petitioner had been regularized is not sufficient to dislodge petitioner from claim for being regularized from his initial engagement from the year 1996 as disparity had been created by respondent in regularizing co-workmen who were junior to him under the garb of intermittent breaks. Be it noticed that respondent had sufficient work and funds and there was no reason for respondent to have not given work to petitioner for full month moreso when other co-workmen had been given work whose service had been regularized and thus petitioner too would be entitled for regularization like his colleagues *i.e.* co-workmen as has come in evidence from his initial engagement in service after requisite period of service required under the government policy for regularization. Be it noticed that respondent's document which is coming from custody of petitioner Ex. PW1/E dated 19-8-2013 with regard to references no. 212/12 (Tilak Raj), 217/12 (Pawan Kumar), 318/12 (Vijay Kumar), 232/12 (Kewal Krishan), 213/12 (Raj Kumar), 214/12 (Shamsher Singh), 215/12 Hem Raj & 216/12 (Ajay Kumar), all the workmen have been regularized as law department opined that workmen had been held entitled to seniority and continuity in service from the date of their initial engagement except back wages. Ex. PW1/F is the order dated 21-1-2014 of Superintending Engineer, IPH Circle Chamba giving effect to letter dated 19-8-2013. Ex. PW1/F further shows that date of deemed regularization *w.e.f.* 20-10-2007 as Chattro Keso Ram, Nidhia Ram & Gurditta which shows that all these workmen had been regularized after 10 years of service. Issue No. 2 is answered in affirmative in favour of petitioner and against respondent. Issue No. 3 is answered in favour of petitioner as discussed above. All these issues are answered accordingly.

*Issue No. 4:*

16. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Issue No. 5:*

17. In so far as plea of delay and laches raising the dispute by petitioner is concerned, suffice would be to state here that petitioner had been continuously working with respondent after having been engaged from 1st January, 1996 till his regularization *i.e.* October 2013 and the

intermittent breaks which had been given from 1st January 1996 to April, 2006 were agitated by petitioner by making representations as can be gathered from para No. 8 of claim petition as also finds mentioned in affidavit Ex. PW1/A which shows that petitioner had made several requests with the respondent and thereafter matter had got into notice of government by trade union and thereafter under instructions *vide* letter No. IPH(A)2(B)1-2-2003-Part dated 27th March, 2006 Ex. PW1/B had been issued to all the Executive Engineers I&PH Department with directions to give work for full month basis. As such, after instructions from the government, petitioner had given regular work and thus delay in raising demand notice in 2014 cannot be stated to have remained unexplained as petitioner had been given work for full month after the instructions of government as stated above. Thus, the delay is satisfactorily explained which could not be stated to be deliberate on account of negligence of petitioner. Moreover, respondent has not disputed issuance of instructions to field staff to PWD/IPH for giving full work after March, 2006. As such, claim petition could not be stated to be barred by delay and laches as pleaded by respondent. This issue is answered in favour of petitioner and against the respondent.

*Relief:*

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement till April 2006 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back-wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 148/2016  
Date of Institution : 17-03-2016  
Date of Decision : 13-09-2018

Shri Mohinder Kumar s/o Shri Hachhu Ram, r/o Village Dugli, P.O. Khundel, Tehsil and  
District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I.&P.H. Division Chamba, District Chamba, H.P. .*Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

1. “Whether alleged time to time termination of services of Shri Mohinder Kumar s/o Shri Hachhu Ram, r/o Village Dugli, P.O. Khundel, Tehsil and District Chamba, H.P. during the year 1995 to April, 2006 by the Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P., who had worked as beldar on daily wages basis and has raised his industrial dispute after more than 7 years vide demand notice dated 30-03-2014, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits the above worker is entitled to from the above employer/management?”
2. Whether the demand of regularization of daily wagger services raised *vide* demand notice dated 30-03-2014 after more than 7 years of Shri Mohinder Kumar s/o Shri Hachhu Ram, r/o Village Dugli, P.O. Khundel, Tehsil and District Chamba, H.P. to be fulfilled by Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P. from the date of his junior workmen have been regularized, as alleged by the worker, is legal and justified? If not, what arrear of wages and consequential relief of service benefits the above worker is entitled to from the above employer/management?”
2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.
3. Averments made in the claim petition reveal that petitioner had been engaged in the month of May, 1995 on musterroll basis by respondent as dailywaged beldar who continuously worked till 1999. It is stated that after retrenchment of petitioner in the year 1999, petitioner had filed O.A.(D) No. 385/1999 before the Hon'ble Administrative Tribunal, Shimla which was decided on 25-10-1999 with the directions to respondent to re-engage petitioner per seniority and subject to availability of work. After that respondent had reengaged petitioner who had continuously upto October, 2013 when his services had been regularized after about 21 years in the month of October, 2013. The grievance of petitioner as can be gathered from the claim petition reveal that respondent had given fictional/artificial breaks to petitioner by allowing to him work only for about 18 days in a month so that petitioner did not complete 240 days and could get benefit of Section 25-B of Industrial Disputes Act, 1947 (hereinafter called the "Act" for brevity). It is alleged that cessation of work for period of intermittent break for 12 to 13 days in each month from 1995 to April, 2006 for about nine years had been given due to which petitioner could not complete 240 days as stated above. Accordingly, having not completed 240 days in a year for the purpose of regularization of daily-wage service the petitioner was not put into work charge cadre. It is alleged that service of petitioner has been interrupted by respondent by allowing him to allocate work for 18 days in a month whereas other junior workmen engaged on muster roll much after the petitioner had been



given regular work in a month particularly co-workmen who had been engaged in the years 1996, 1997, 1998 and 1999 respectively. Thus, while allocating to work to junior and not allocating work to petitioner clearly established existence of sufficient budget and work and thus violated Section 25-G of Act which also amounts to unfair labour practice. It is claimed that junior workmen whose names had been reflected in Annexure-P1 were junior to petitioner but were regularized after eight years and had completed 240 days in each year but contrarily due to break in service petitioner could not be regularized. It is claimed that all these workmen have been allowed retrospective regularization on completion of eight years of service in view of judgment of Hon'ble High Court of H.P. titled as Rakesh Kumar Vs. State of H.P. and Ors. It is alleged that without any rhyme or reason, respondent had given break in service to petitioner discriminating against other co-workmen who were junior to petitioner and given work for full month. Accordingly, petitioner prays that period of intermittent illegal/artificial breaks given by respondent from time to time between 1995 to April, 2006 be declared illegal and unjustified and respondent be directed to count the period as continuous service for the purpose of 240 days in each calendar year from 1995 to 2006 as stated above besides back wages and other consequential benefits and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been working continuously on daily wage basis but was not given break intermittently from 1995 to 2006 deliberately as claimed by petitioner rather after 2006 as stated above petitioner had been given work regularly. It is emphatically denied that fictional breaks had been given to petitioner deliberately so that he could complete 240 days besides as and when petitioner completed requisite criteria for regularization as per government policy he was regularized in the month of October, 2013. It has been denied that any junior workmen to the petitioner had been regularized in service rather only those workmen were regularized by respondent/department who had continuously worked with the respondent and fulfilled criteria for regularization as per government policy for regularization besides no provision of the Act as alleged by petitioner was violated by respondent. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of letter dated 27-4-2006 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copy of order dated 22-4-2013 Ex. PW1/D, copy of letter dated 19-8-2013 Ex. PW1/E, copy of regularization order dated 21-1-2014 Ex. PW1/F, copy of joint representations dated 13-4-2004 & 13-4-2004 Mark-A1 and Mark-A2, list of junior Mark-A3, copy of Divisional level seniority lists of junior daily wagers Mark-A4/Ex. P1 & Mark-A5/Ex. P2, copy of joint representation dated 22-4-2008 Mark-A6, copy of representation dated 17-5-2013 Mark A7 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kapur, the then Executive Engineer, IPH Division Chamba as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart of petitioner and other workers Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-10-2017 for determination:—

- (1) Whether time to time termination of services of the petitioner by the respondent during year, 1995 to April, 2006 is/was illegal and unjustified as alleged? ..OPP.

- (2) Whether the demand of regularization of daily wager service raised *vide* demand notice dated 30-03-2014 is legal and justified as alleged? ..*OPP*.
- (3) If issues No.1 or 2 are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (5) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.

Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: No
Issue No. 5	: No
Relief	: Petition is partly allowed per operative part of award.

#### REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the petitioner that he had been engaged by respondent on 1<sup>st</sup> May 1995 who continuously worked till date but was regularized in October, 2013. The grievance of petitioner remains two fold, firstly with regard to time to time break given from 1<sup>st</sup> May, 1995 to April, 2006 by respondent deliberately with the object that petitioner did not complete 240 days so as to meet requirement of Section 25-B of Act and secondly after having been engaged in 1996 was liable to be regularized in 2007 as per policy of the government but due to break in service from 1995 to April, 2006 he could not complete requisite criteria for regularization for government policy. As such, delay in regularization in October, 2013 on account of intermittent break has also been challenged. To appreciate controversy in issue evidence adduced by parties in support of their respective claims needs to be gone through but at this stage before proceeding further, it would be apt to refer to documentary evidence.

12. Ex. P2 is the seniority list revealing workers engaged in the years 1996 to 2000 to have been regularized by respondent but were certainly junior to petitioner. This document further shows that those workmen who had been engaged later than petitioner were not given intermittent break in service rather had been given adequate work. Ex. PW1/C is the mandays chart dealing with month-wise working days of petitioner from 1st May, 1995 to 31-10-2013. A bare glance at mandays chart Ex. PW1/C would show that petitioner had worked for 79 days in the year 1995, 189 days in 1996, 13 days in 1997, 145 days in 1998, 49 days in 1999, 66 days in 2001, 177 days in 2002, 209 days in 2003, 214 days in 2004, 180 days in 2005, 297 days in 2006, 315 days in 2007, 320 days in 2008, 340 days in 2009, 349 days in 2010, 357 days in 2011, 328 days in 2012 and 248 days in 2013. This document clearly shows that petitioner had been given full month work from 1-5-2006 and prior to it petitioner was engaged only for 17 to 19 days in each month which further strengthens plea of petitioner that breaks in service prior to April, 2006 had been deliberately given by respondent as other co-workmen as discussed above had been given work for full month during that

period although they were engaged in 1997 whereas petitioner had been engaged from 1st May, 1995. The fact that respondent had given deliberate intermittent breaks to petitioner can be safely gathered from Ex. P2 as co-workmen shown in it were admittedly junior to petitioner who had been regularized in 2007. It further finds support from cross-examination of RW1 Shri Dinesh Kapur, Executive Engineer, IPH Chamba as contesting respondent who revealed that co-workmen reflected in Ex. P2 at Sl. Nos.1 to 87 had been regularized and were junior to petitioner and thus claim of petitioner gets further strengthened not only from cross-examination of RW1 but also from documentary evidence establishing that junior to petitioner had not been given intermittent breaks who had been regularized in 2007 whereas petitioner has been regularized in October, 2013 who had joined much prior to these co-workmen as stated above.

13. Ld. Dy. D.A. for the respondent has vehemently argued that petitioner is working ever since May 1995 whose service had been regularized in October 2013 and the delay in regularization took place due to break in service as stated above. On the other hand, Ld. Authorized Representative for petitioner has denied benefit of seniority and continuity in service to which he was entitled but for he was denied the regularization from initial engagement by respondent under the garb of intermittent breaks which has been established by petitioner by adducing reliable evidence on record this score. Certainly, when intermittent breaks had been given to petitioner from his initial engagement till April, 2006 the delay in regularization was obvious as it has been established on record that intermittent breaks were deliberately given to petitioner prior to April 2006 rather after instructions issued *vide* letter dated 27-3-2006 Ex. PW1/B govt. of H.P. to respondent and all other field staff to give work to dailywage beldar for full month. As such, I find no substance in arguments advanced by Ld. Dy.D.A. for respondent that intermittent break was not deliberate and accordingly, it is held that intermittent breaks till April, 2006 as stated above were deliberately given so that petitioner did not complete 240 days in a year so as to avail benefit of Section 25-B of Act.

14. In so far as petitioner having not been gainfully employed during intermittent break as stated above, suffice would be to state here that petitioner in his cross-examination has specifically admitted that he had cultivable land and thus had livelihood therefrom. As such, it cannot be stated that petitioner had not remained gainfully employed during intermittent break period. I am supported by judgment of Hon'ble Apex Court in **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '*term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same*'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled backwages. Accordingly, issue No. 1 is answered in affirmative in favour of petitioner and against the respondent.

15. In so far as claim of petitioner for regularization after 10 years of service as raised in his demand notice dated 30-3-2014 is concerned, it has been discussed in foregoing paras that due to deliberate breaks petitioner could not be regularized in the year 2007 as other co-workmen who were junior to him and thus petitioner too would be entitled for regularization after 10 years of service from his initial engagement. Merely because petitioner had been regularized is not sufficient to dislodge petitioner from claim for being regularized from his initial engagement from the year 1995 as disparity had been created by respondent in regularizing co-workmen who were junior to him under the garb of intermittent breaks. Be it noticed that respondent had sufficient

work and funds and there was no reason for respondent to have not given work to petitioner for full month moreso when other co-workmen had been given work whose service had been regularized and thus petitioner too would be entitled for regularization like his colleagues *i.e.* co-workmen as has come in evidence from his initial engagement in service after requisite period of service required under the government policy for regularization. Be it noticed that respondent's document which is coming from custody of petitioner Ex. PW1/E dated 19-8-2013 with regard to references No. 212/12 (Tilak Raj), 217/12 (Pawan Kumar), 318/12 (Vijay Kumar), 232/12 (Kewal Krishan), 213/12 (Raj Kumar), 214/12 (Shamsher Singh), 215/12 Hem Raj & 216/12 (Ajay Kumar), all the workmen have been regularized as law department opined that workmen had been held entitled to seniority and continuity in service from the date of their initial engagement except back wages. Ex. PW1/F is the order dated 21-1-2014 of Superintending Engineer, IPH Circle Chamba giving effect to letter dated 19-8-2013. Ex. PW1/F further shows that date of deemed regularization *w.e.f.* 20-10-2007 as Chattro Keso Ram, Nidhia Ram & Gurditta which shows that all these workmen had been regularized after 10 years of service. Issue No. 2 is answered in affirmative in favour of petitioner and against respondent. Issue No. 3 is answered in favour of petitioner as discussed above. All these issues are answered accordingly.

*Issue No. 4:*

16. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Issue No. 5:*

17. In so far as plea of delay and laches raising the dispute by petitioner is concerned, suffice would be to state here that petitioner had been continuously working with respondent after having been engaged from 1st May, 1995 till his regularization *i.e.* October, 2013 and the intermittent breaks which had been given from 1st May, 1995 to April, 2006 were agitated by petitioner by making representations as can be gathered from para No. 8 of claim petition as also finds mentioned in affidavit Ex. PW1/A which shows that petitioner had made several requests with the respondent and thereafter matter had got into notice of government by trade union and thereafter under instructions *vide* letter No. IPH(A)2(B)1-2-2003-Part dated 27th March, 2006 Ex. PW1/B had been issued to all the Executive Engineers I&PH Department with directions to give work for full month basis. As such, after instructions from the government, petitioner had given regular work and thus delay in raising demand notice in 2014 cannot be stated to have remained unexplained as petitioner had been given work for full month after the instructions of government as stated above. Thus, the delay is satisfactorily explained which could not be stated to be deliberate on account of negligence of petitioner. Moreover, respondent has not disputed issuance of instructions to field staff to PWD/IPH for giving full work after March, 2006. As such, claim petition could not be stated to be barred by delay and laches as pleaded by respondent. This issue is answered in favour of petitioner and against the respondent.

*Relief:*

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement till April 2006 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from

his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back-wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 147/2016  
Date of Institution : 17-03-2016  
Date of Decision : 13-09-2018

Shri Rakesh Kumar s/o Shri Hans Raj, r/o Village and Post Office Saru, Tehsil and District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I.&P.H. Division Chamba, District Chamba, H.P. ..Respondent.

### Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

The reference given below has been received from the appropriate Government for adjudication:—

1. “Whether alleged time to time termination of services of Shri Rakesh Kumar s/o Shri Hans Raj, r/o Village and Post Office Saru, Tehsil and District Chamba, H.P. during the year 1997 to April, 2006 by the Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P., who had worked as beldar on dailywages basis and has raised

his industrial dispute after more than 7 years *vide* demand notice dated 30-03-2014, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period and delay of more than 7 years in raising the industrial dispute, what amount of backwages, seniority, past service benefits the above worker is entitled to from the above employer/management?"

2. Whether the demand of regularization of dailywager services raised *vide* demand notice dated 30-03-2014 after more than 7 years of Shri Rakesh Kumar s/o Shri Hans Raj, r/o Village and Post Office Saru, Tehsil and District Chamba, H.P. to be fulfilled by Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P. from the date of his junior workmen have been regularized, as alleged by the worker, is legal and justified? If not, what arrear of wages and consequential relief of service benefits the above worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Averments made in the claim petition reveal that petitioner had been engaged in the month of March 1997 on musterroll basis by respondent as dailywaged beldar who continuously worked till October, 2013 when his services had been regularized after about 17 years in the month of October, 2013. The grievance of petitioner as can be gathered from the claim petition reveal that respondent had given fictional/artificial breaks to petitioner by allowing to him work only for about 18 days in a month so that petitioner did not complete 240 days and could get benefit of Section 25-B of Industrial Disputes Act, 1947 (hereinafter called the "Act" for brevity). It is alleged that cessation of work for period of intermittent break for 12 to 13 days in each month from 1997 to April, 2006 for about nine years had been given due to which petitioner could not complete 240 days as stated above. Accordingly, having not completed 240 days in a year for the purpose of regularization of daily wage service the petitioner was not put into work charge cadre. It is alleged that service of petitioner has been interrupted by respondent by allowing him to allocate work for 18 days in a month whereas other junior workmen engaged on muster roll much after the petitioner had been given regular work in a month particularly co-workmen who had been engaged in the years 1997, 1998 and 1999 respectively. Thus, while allocating to work to junior and not allocating work to petitioner clearly established existence of sufficient budget and work and thus violated Section 25-G of Act which also amounts to unfair labour practice. It is claimed that junior workmen whose names had been reflected in Annexure-P1 were junior to petitioner but were regularized after eight years and had completed 240 days in each year but contrarily due to break in service petitioner could not be regularized. It is claimed that all these workmen have been allowed retrospective regularization on completion of eight years of service in view of judgment of Hon'ble High Court of H.P. titled as Rakesh Kumar Vs. State of H.P. and Ors. It is alleged that without any rhyme or reason, respondent had given break in service to petitioner discriminating against other co-workmen who were junior to petitioner and given work for full month. Accordingly, petitioner prays that period of intermittent illegal/artificial breaks given by respondent from time to time between 1997 to April, 2006 be declared illegal and unjustified and respondent be directed to count the period as continuous service for the purpose of 240 days in each calendar year from 1997 to 2006 as stated above besides back-wages and other consequential benefits and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been working continuously on daily wage basis but was not given break intermittently from 1997 to 2006 deliberately as claimed by petitioner rather after 2006 as stated above petitioner had been given work regularly. It is emphatically denied that fictional breaks had been given to petitioner deliberately so that he could complete 240 days besides as and

when petitioner completed requisite criteria for regularization as per government policy he was regularized in the month of October 2013. It has been denied that any junior workmen to the petitioner had been regularized in service rather only those workmen were regularized by respondent/department who had continuously worked with the respondent and fulfilled criteria for regularization as per government policy for regularization besides no provision of the Act as alleged by petitioner was violated by respondent. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of letter dated 27-4-2006 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copy of order dated 22-4-2013 Ex. PW1/D, copy of letter dated 19-8-2013 Ex. PW1/E, copy of regularization order dated 21-1-2014 Ex. PW1/F, copy of joint representations dated 13-4-2004 & 13-4-2004 Mark-A1 and Mark-A2, list of junior Mark-A3, copy of Divisional level seniority lists of junior dailywagers Mark- A4/Ex. P1 & Mark-A5/Ex. P2, copy of joint representation dated 22-4-2008 Mark-A6, copy of representation dated 17-5-2013 Mark A7 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kapur, the then Executive Engineer, IPH Division Chamba as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart of petitioner and other workers Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-10-2017 for determination:—

- (1) Whether time to time termination of services of the petitioner by the respondent during year, 1997 to April, 2006 is/was illegal and unjustified as alleged? ..OPP.
- (2) Whether the demand of regularization of daily wager service raised *vide* demand notice dated 30-03-2014 is legal and justified as alleged? ..OPP.
- (3) If issue No.1 or No.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (5) Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: No
Issue No. 5	: No
Relief.	: Petition is partly allowed per operative part of award.

### REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the petitioner that he had been engaged by respondent on 1<sup>st</sup> March, 1997 who continuously worked till date but was regularized in October, 2013. The grievance of petitioner remains two fold, firstly with regard to time to time break given from 1<sup>st</sup> March, 1997 to April, 2006 by respondent deliberately with the object that petitioner did not complete 240 days so as to meet requirement of Section 25-B of Act and secondly after having been engaged in 1997 was liable to be regularized in 2007 as per policy of the government but due to break in service from 1997 to April, 2006 he could not complete requisite criteria for regularization for government policy. As such, delay in regularization in October, 2013 on account of intermittent break has also been challenged. To appreciate controversy in issue evidence adduced by parties in support of their respective claims needs to be gone through but at this stage before proceeding further, it would be apt to refer to documentary evidence.

12. Ex. P2 is the seniority list revealing workers engaged in the years 1997 to 2000 to have been regularized by respondent but were certainly junior to petitioner. This document further shows that those workmen who had been engaged later than petitioner were not given intermittent break in service rather had been given adequate work. Ex. PW1/C is the mandays chart dealing with month-wise working days of petitioner from 1st March 1997 to 31-10-2013. A bare glance at mandays chart Ex. PW1/C would show that petitioner had worked for 168 days in the year 1997, 183 days in 1998, 196 days in 1999, 207 days in 2000, 209 days in 2001, 206 days in 2002, 200 days in 2003, 205 days in 2004, 239 days in 2005, 317 days in 2006, 365 days in 2007, 363 days in 2008, 365 days in 2009, 365 days in 2010, 363 days in 2011, 364 days in 2012 and 276 days in 2013. This document clearly shows that petitioner had been given full month work from 1-4-2006 and prior to it petitioner was engaged only for 17 to 19 days in each month which further strengthens plea of petitioner that breaks in service prior to April, 2006 had been deliberately given by respondent as other co-workmen as discussed above had been given work for full month during that period although they were engaged in 1997 whereas petitioner had been engaged from 1st March, 1997. The fact that respondent had given deliberate intermittent breaks to petitioner can be safely gathered from Ex. P2 as co-workmen shown in it were admittedly junior to petitioner who had been regularized in 2007. It further finds support from cross-examination of RW1 Shri Dinesh Kapur, Executive Engineer, IPH Chamba as contesting respondent who revealed that co-workmen reflected in Ex. P2 at Sr. Nos.1 to 87 had been regularized and were junior to petitioner and thus claim of petitioner gets further strengthened not only from cross-examination of RW1 but also from documentary evidence establishing that junior to petitioner had not been given intermittent breaks who had been regularized in 2007 whereas petitioner has been regularized in October 2013 who had joined much prior to these co-workmen as stated above.

13. Ld. Dy. D.A. for the respondent has vehemently argued that petitioner is working ever since March 1997 whose service had been regularized in October 2013 and the delay in regularization took place due to break in service as stated above. On the other hand, ld. Authorized Representative for petitioner has denied benefit of seniority and continuity in service to which he was entitled but for he was denied the regularization from initial engagement by respondent under the garb of intermittent breaks which has been established by petitioner by adducing reliable evidence on record this score. Certainly, when intermittent breaks had been given to petitioner from his initial engagement till April, 2006 the delay in regularization was obvious as it has been established on record that intermittent breaks were deliberately given to petitioner prior to April, 2006 rather after instructions issued *vide* letter dated 27-3-2006 Ex. PW1/B govt. of H.P. to respondent and all other field staff to give work to daily wage beldar for full month. As such, I find no substance in arguments advanced by ld. Dy.D.A. for respondent that intermittent break was not deliberate and accordingly, it is held that intermittent breaks till April 2006 as stated above were deliberately given so that petitioner did not complete 240 days in a year so as to avail benefit of Section 25-B of Act.



14. In so far as petitioner having not been gainfully employed during intermittent break as stated above, suffice would be to state here that petitioner in his cross-examination has specifically admitted that he had cultivable land and thus had livelihood there from. As such, it cannot be stated that petitioner had not remained gainfully employed during intermittent break period. I am supported by judgment of Hon'ble Apex Court in **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '*term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same*'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled back-wages. Accordingly, issue no.1 is answered in affirmative in favour of petitioner and against the respondent.

15. In so far as claim of petitioner for regularization after 10 years of service as raised in his demand notice dated 30-3-2014 is concerned, it has been discussed in foregoing paras that due to deliberate breaks petitioner could not be regularized in the year 2007 as other co-workmen who were junior to him and thus petitioner too would be entitled for regularization after 10 years of service from his initial engagement. Merely because petitioner had been regularized is not sufficient to dislodge petitioner from claim for being regularized from his initial engagement from the year 1997 as disparity had been created by respondent in regularizing co-workmen who were junior to him under the garb of intermittent breaks. Be it noticed that respondent had sufficient work and funds and there was no reason for respondent to have not given work to petitioner for full month moreso when other co-workmen had been given work whose service had been regularized and thus petitioner too would be entitled for regularization like his colleagues *i.e.* co-workmen as has come in evidence from his initial engagement in service after requisite period of service required under the government policy for regularization. Be it noticed that respondent's document which is coming from custody of petitioner Ex. PW1/E dated 19-8-2013 with regard to references No. 212/12 (Tilak Raj), 217/12 (Pawan Kumar), 318/12 (Vijay Kumar), 232/12 (Kewal Krishan), 213/12 (Raj Kumar), 214/12 (Shamsher Singh), 215/12 Hem Raj & 216/12 (Ajay Kumar), all the workmen have been regularized as law department opined that workmen had been held entitled to seniority and continuity in service from the date of their initial engagement except back wages. Ex. PW1/F is the order dated 21-1-2014 of Superintending Engineer, IPH Circle Chamba giving effect to letter dated 19-8-2013. Ex. PW1/F further shows that date of deemed regularization *w.e.f.* 20-10-2007 as Chattro Keso Ram, Nidhia Ram & Gurditta which shows that all these workmen had been regularized after 10 years of service. Issue No. 2 is answered in affirmative in favour of petitioner and against respondent. Issue No. 3 is answered in favour of petitioner as discussed above. All these issues are answered accordingly.

*Issue No. 4:*

16. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Issue No. 5:*

17. In so far as plea of delay and laches raising the dispute by petitioner is concerned, suffice would be to state here that petitioner had been continuously working with respondent after

having been engaged from 1st March, 1997 till his regularization *i.e.* October, 2013 and the intermittent breaks which had been given from 1st March, 1997 to April, 2006 were agitated by petitioner by making representations as can be gathered from para No. 8 of claim petition as also finds mentioned in affidavit Ex. PW1/A which shows that petitioner had made several requests with the respondent and thereafter matter had got into notice of government by trade union and thereafter under instructions *vide* letter No. IPH(A)2(B)1-2-2003-Part dated 27th March, 2006 Ex. PW1/B had been issued to all the Executive Engineers I&PH Department with directions to give work for full month basis. As such, after instructions from the government, petitioner had given regular work and thus delay in raising demand notice in 2014 cannot be stated to have remained unexplained as petitioner had been given work for full month after the instructions of government as stated above. Thus, the delay is satisfactorily explained which could not be stated to be deliberate on account of negligence of petitioner. Moreover, respondent has not disputed issuance of instructions to field staff to PWD/IPH for giving full work after March, 2006. As such, claim petition could not be stated to be barred by delay and laches as pleaded by respondent. This issue is answered in favour of petitioner and against the respondent.

*Relief:*

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement till April 2006 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back-wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 153/2016  
Date of Institution : 17-03-2016  
Date of Decision : 13-09-2018

Shri Subhash s/o Shri Hem Chand, r/o Village Millah, P.O. Singi, Tehsil and District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I.&P.H. Division Chamba, District Chamba, H.P. ..Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, AR  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

1. “Whether alleged time to time termination of services of Shri Subhash s/o Shri Hem Chand, r/o Village Millah, P.O. Singi, Tehsil and District Chamba, H.P. during the year 1997 to April, 2006 by the Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P., who had worked as beldar on dailywages basis and has raised his industrial dispute after more than 7 years *vide* demand notice dated 30-03-2014, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period and delay of more than 7 years in raising the industrial dispute, what amount of backwages, seniority, past service benefits the above worker is entitled to from the above employer/management?”
2. Whether the demand of regularization of daily wage services raised *vide* demand notice dated 30-03-2014 after more than 7 years of Shri Subhash s/o Shri Hem Chand, r/o Village Millah, P.O. Singi, Tehsil and District Chamba, H.P. to be fulfilled by Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P. from the date of his junior workmen have been regularized, as alleged by the worker, is legal and justified? If not, what arrear of wages and consequential relief of service benefits the above worker is entitled to from the above employer/management?”
2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.
3. Averments made in the claim petition reveal that petitioner had been engaged in the month of March 1997 on muster roll basis by respondent as daily waged beldar who continuously worked till October 2013 when his services had been regularized after about 17 years in the month of October, 2013. The grievance of petitioner as can be gathered from the claim petition reveal that respondent had given fictional/artificial breaks to petitioner by allowing to him work only for about 18 days in a month so that petitioner did not complete 240 days and could get benefit of Section 25-B of Industrial Disputes Act, 1947 (hereinafter called the "Act" for brevity). It is alleged that cessation of work for period of intermittent break for 12 to 13 days in each month from 1997 to April 2006 for about nine years had been given due to which petitioner could not complete 240 days as stated above. Accordingly, having not completed 240 days in a year for the purpose of regularization of daily wage service the petitioner was not put into work charge cadre. It is alleged that service of petitioner has been interrupted by respondent by allowing him to allocate work for 18 days in a month whereas other junior workmen engaged on muster roll much after the petitioner had been given regular work in a month particularly co-workmen who had been engaged in the

years 1997, 1998 and 1999 respectively. Thus, while allocating to work to junior and not allocating work to petitioner clearly established existence of sufficient budget and work and thus violated Section 25-G of Act which also amounts to unfair labour practice. It is claimed that junior workmen whose names had been reflected in Annexure-P1 were junior to petitioner but were regularized after eight years and had completed 240 days in each year but contrarily due to break in service petitioner could not be regularized. It is claimed that all these workmen have been allowed retrospective regularization on completion of eight years of service in view of judgment of Hon'ble High Court of H.P. titled as Rakesh Kumar vs. State of H.P. and Ors. It is alleged that without any rhyme or reason, respondent had given break in service to petitioner discriminating against other co-workmen who were junior to petitioner and given work for full month. Accordingly, petitioner prays that period of intermittent illegal/artificial breaks given by respondent from time to time between 1997 to April, 2006 be declared illegal and unjustified and respondent be directed to count the period as continuous service for the purpose of 240 days in each calendar year from 1997 to 2006 as stated above besides back wages and other consequential benefits and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been working continuously on daily wage basis but was not given break intermittently from 1997 to 2006 deliberately as claimed by petitioner rather after 2006 as stated above petitioner had been given work regularly. It is emphatically denied that fictional breaks had been given to petitioner deliberately so that he could complete 240 days besides as and when petitioner completed requisite criteria for regularization as per government policy he was regularized in the month of October, 2013. It has been denied that any junior workmen to the petitioner had been regularized in service rather only those workmen were regularized by respondent/department who had continuously worked with the respondent and fulfilled criteria for regularization as per government policy for regularization besides no provision of the Act as alleged by petitioner was violated by respondent. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of letter dated 27-4-2006 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copy of order dated 22-4-2013 Ex. PW1/D, copy of letter dated 19-8-2013 Ex. PW1/E, copy of regularization order dated 21-1-2014 Ex. PW1/F, copy of joint representations dated 13-4-2004 & 13-4-2004 Mark-A1 and Mark-A2, list of junior Mark-A3, copy of Divisional level seniority lists of junior dailywagers Mark-A4/Ex. P1 & Mark-A5/Ex. P2, copy of joint representation dated 22-4-2008 Mark-A6, copy of representation dated 17-5-2013 Mark A7 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kapur, the then Executive Engineer, IPH Division Chamba as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart of petitioner and other workers Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-10-2017 for determination:—

- (1) Whether time to time termination of services of the petitioner by the respondent during year, 1997 to April, 2006 is/was illegal and unjustified as alleged? ..OPP.

- (2) Whether the demand of regularization of daily wager service raised *vide* demand notice dated 30-03-2014 is legal and justified as alleged? ..*OPP*.
- (3) If issues No. 1 or No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (5) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.

Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: No
Issue No. 5	: No
Relief	: Petition is partly allowed per operative part of award.

#### REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the petitioner that he had been engaged by respondent on 1<sup>st</sup> March, 1997 who continuously worked till date but was regularized in October, 2013. The grievance of petitioner remains two fold, firstly with regard to time to time break given from 1<sup>st</sup> March 1997 to April 2006 by respondent deliberately with the object that petitioner did not complete 240 days so as to meet requirement of Section 25-B of Act and secondly after having been engaged in 1997 was liable to be regularized in 2007 as per policy of the government but due to break in service from 1997 to April, 2006 he could not complete requisite criteria for regularization for government policy. As such, delay in regularization in October, 2013 on account of intermittent break has also been challenged. To appreciate controversy in issue evidence adduced by parties in support of their respective claims needs to be gone through but at this stage before proceeding further, it would be apt to refer to documentary evidence.

12. Ex. P2 is the seniority list revealing workers engaged in the years 1997 to 2000 to have been regularized by respondent but were certainly junior to petitioner. This document further shows that those workmen who had been engaged later than petitioner were not given intermittent break in service rather had been given adequate work. Ex. PW1/C is the mandays chart dealing with month-wise working days of petitioner from 1st March 1997 to 31-10-2013. A bare glance at mandays chart Ex. PW1/C would show that petitioner had worked for 160 days in the year 1997, 189 days in 1998, 192 days in 1999, 191 days in 2000, 204 days in 2001, 201 days in 2002, 202 days in 2003, 206 days in 2004, 218 days in 2005, 313 days in 2006, 350 days in 2007, 363 days in 2008, 355 days in 2009, 365 days in 2010, 359 days in 2011, 346 days in 2012 and 283 days in 2013. This document clearly shows that petitioner had been given full month work from 1-4-2006 and prior to it petitioner was engaged only for 17 to 19 days in each month which further strengthens plea of petitioner that breaks in service prior to April, 2006 had been deliberately given by respondent as

other co-workmen as discussed above had been given work for full month during that period although they were engaged in 1997 whereas petitioner had been engaged from 1st March, 1997. The fact that respondent had given deliberate intermittent breaks to petitioner can be safely gathered from Ex. P2 as co-workmen shown in it were admittedly junior to petitioner who had been regularized in 2007. It further finds support from cross-examination of RW1 Shri Dinesh Kapur, Executive Engineer, IPH Chamba as contesting respondent who revealed that co-workmen reflected in Ex. P2 at Sl. Nos. 1 to 87 had been regularized and were junior to petitioner and thus claim of petitioner gets further strengthened not only from cross-examination of RW1 but also from documentary evidence establishing that junior to petitioner had not been given intermittent breaks who had been regularized in 2007 whereas petitioner has been regularized in October, 2013 who had joined much prior to these co-workmen as stated above.

13. Ld. Dy. D.A. for the respondent has vehemently argued that petitioner is working ever since March, 1997 whose service had been regularized in October, 2013 and the delay in regularization took place due to break in service as stated above. On the other hand, Ld. Authorized Representative for petitioner has denied benefit of seniority and continuity in service to which he was entitled but for he was denied the regularization from initial engagement by respondent under the garb of intermittent breaks which has been established by petitioner by adducing reliable evidence on record this score. Certainly, when intermittent breaks had been given to petitioner from his initial engagement till April, 2006 the delay in regularization was obvious as it has been established on record that intermittent breaks were deliberately given to petitioner prior to April, 2006 rather after instructions issued vide letter dated 27-3-2006 Ex. PW1/B govt. of H.P. to respondent and all other field staff to give work to daily wage beldar for full month. As such, I find no substance in arguments advanced by Ld. Dy.D.A. for respondent that intermittent break was not deliberate and accordingly, it is held that intermittent breaks till April, 2006 as stated above were deliberately given so that petitioner did not complete 240 days in a year so as to avail benefit of Section 25-B of Act.

14. In so far as petitioner having not been gainfully employed during intermittent break as stated above, suffice would be to state here that petitioner in his cross-examination has specifically admitted that he had cultivable land and thus had livelihood there from. As such, it cannot be stated that petitioner had not remained gainfully employed during intermittent break period. I am supported by judgment of Hon'ble Apex Court in **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '*term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same*'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled backwages. Accordingly, issue No. 1 is answered in affirmative in favour of petitioner and against the respondent.

15. In so far as claim of petitioner for regularization after 10 years of service as raised in his demand notice dated 30-3-2014 is concerned, it has been discussed in foregoing paras that due to deliberate breaks petitioner could not be regularized in the year 2007 as other co-workmen who were junior to him and thus petitioner too would be entitled for regularization after 10 years of service from his initial engagement. Merely because petitioner had been regularized is not sufficient to dislodge petitioner from claim for being regularized from his initial engagement from the year 1997 as disparity had been created by respondent in regularizing co-workmen who were

junior to him under the garb of intermittent breaks. Be it noticed that respondent had sufficient work and funds and there was no reason for respondent to have not given work to petitioner for full month moreso when other co-workmen had been given work whose service had been regularized and thus petitioner too would be entitled for regularization like his colleagues *i.e.* co-workmen as has come in evidence from his initial engagement in service after requisite period of service required under the government policy for regularization. Be it noticed that respondent's document which is coming from custody of petitioner Ex. PW1/E dated 19-8-2013 with regard to references no.212/12 (Tilak Raj), 217/12 (Pawan Kumar), 318/12 (Vijay Kumar), 232/12 (Kewal Krishan), 213/12 (Raj Kumar), 214/12 (Shamsher Singh), 215/12 Hem Raj & 216/12 (Ajay Kumar), all the workmen have been regularized as law department opined that workmen had been held entitled to seniority and continuity in service from the date of their initial engagement except back-wages. Ex. PW1/F is the order dated 21-1-2014 of Superintending Engineer, IPH Circle Chamba giving effect to letter dated 19-8-2013. Ex. PW1/F further shows that date of deemed regularization *w.e.f.* 20-10-2007 as Chattro Keso Ram, Nidhia Ram & Gurditta which shows that all these workmen had been regularized after 10 years of service. Issue No. 2 is answered in affirmative in favour of petitioner and against respondent. Issue No. 3 is answered in favour of petitioner as discussed above. All these issues are answered accordingly.

*Issue No. 4:*

16. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Issue No. 5:*

17. In so far as plea of delay and laches raising the dispute by petitioner is concerned, suffice would be to state here that petitioner had been continuously working with respondent after having been engaged from 1st March 1997 till his regularization *i.e.* October, 2013 and the intermittent breaks which had been given from 1st March, 1997 to April, 2006 were agitated by petitioner by making representations as can be gathered from para no. 8 of claim petition as also finds mentioned in affidavit Ex. PW1/A which shows that petitioner had made several requests with the respondent and thereafter matter had got into notice of government by trade union and thereafter under instructions *vide* letter no. IPH(A)2(B)1-2-2003-Part dated 27th March, 2006 Ex. PW1/B had been issued to all the Executive Engineers I&PH Department with directions to give work for full month basis. As such, after instructions from the government, petitioner had given regular work and thus delay in raising demand notice in 2014 cannot be stated to have remained unexplained as petitioner had been given work for full month after the instructions of government as stated above. Thus, the delay is satisfactorily explained which could not be stated to be deliberate on account of negligence of petitioner. Moreover, respondent has not disputed issuance of instructions to field staff to PWD/IPH for giving full work after March, 2006. As such, claim petition could not be stated to be barred by delay and laches as pleaded by respondent. This issue is answered in favour of petitioner and against the respondent.

*Relief:*

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement till April, 2006 and that the breaks given by the respondent being fictional in nature shall have no

effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back- wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 149/2016  
Date of Institution : 17-03-2016  
Date of Decision : 13-09-2018

Shri Kamal Lal s/o Shri Karam Chand, r/o Village and Post Office Chaned, Tehsil and District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I.&P.H. Division Chamba, District Chamba, H.P. ..Respondent.  
**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, AR  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

The reference given below has been received from the appropriate Government for adjudication:—

1. “Whether alleged time to time termination of services of Shri Kamal Lal s/o Shri Karam Chand, r/o Village and Post Office Chaned, Tehsil and District Chamba, H.P. during the year 1997 to April 2006 by the Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P., who had worked as beldar on daily wages basis and has raised his industrial dispute after more than 7 years *vide* demand notice dated



- 30-03-2014, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits the above worker is entitled to from the above employer/management?"
2. Whether the demand of regularization of daily wage services raised *vide* demand notice dated 30-03-2014 after more than 7 years of Shri Kamal Lal s/o Shri Karam Chand, r/o Village and Post Office Chaned, Tehsil and District Chamba, H.P. to be fulfilled by Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P. from the date of his junior workmen have been regularized, as alleged by the worker, is legal and justified? If not, what arrear of wages and consequential relief of service benefits the above worker is entitled to from the above employer/management?"
  2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.
  3. Averments made in the claim petition reveal that petitioner had been engaged in the month of April, 1997 on muster roll basis by respondent as daily waged beldar who continuously worked till October, 2013 when his services had been regularized after about 17 years in the month of October, 2013. The grievance of petitioner as can be gathered from the claim petition reveal that respondent had given fictional/artificial breaks to petitioner by allowing to him work only for about 18 days in a month so that petitioner did not complete 240 days and could get benefit of Section 25-B of Industrial Disputes Act, 1947 (hereinafter called the "Act" for brevity). It is alleged that cessation of work for period of intermittent break for 12 to 13 days in each month from 1997 to April 2006 for about nine years had been given due to which petitioner could not complete 240 days as stated above. Accordingly, having not completed 240 days in a year for the purpose of regularization of daily wage service the petitioner was not put into work charge cadre. It is alleged that service of petitioner has been interrupted by respondent by allowing him to allocate work for 18 days in a month whereas other junior workmen engaged on muster-roll much after the petitioner had been given regular work in a month particularly co-workmen who had been engaged in the years 1997, 1998 and 1999 respectively. Thus, while allocating to work to junior and not allocating work to petitioner clearly established existence of sufficient budget and work and thus violated Section 25-G of Act which also amounts to unfair labour practice. It is claimed that junior workmen whose names had been reflected in Annexure-P1 were junior to petitioner but were regularized after eight years and had completed 240 days in each year but contrarily due to break in service petitioner could not be regularized. It is claimed that all these workmen have been allowed retrospective regularization on completion of eight years of service in view of judgment of Hon'ble High Court of H.P. titled as Rakesh Kumar *Vs.* State of H.P. and Ors. It is alleged that without any rhyme or reason, respondent had given break in service to petitioner discriminating against other co-workmen who were junior to petitioner and given work for full month. Accordingly, petitioner prays that period of intermittent illegal/artificial breaks given by respondent from time to time between 1997 to April, 2006 be declared illegal and unjustified and respondent be directed to count the period as continuous service for the purpose of 240 days in each calendar year from 1997 to 2006 as stated above besides back-wages and other consequential benefits and to any other relief petitioner is entitled.
  4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been working continuously on daily wage basis but was not given break intermittently from 1997 to 2006 deliberately as claimed by petitioner rather after 2006 as stated above petitioner had been given work regularly. It is emphatically denied that fictional

breaks had been given to petitioner deliberately so that he could complete 240 days besides as and when petitioner completed requisite criteria for regularization as per government policy he was regularized in the month of October, 2013. It has been denied that any junior workmen to the petitioner had been regularized in service rather only those workmen were regularized by respondent/department who had continuously worked with the respondent and fulfilled criteria for regularization as per government policy for regularization besides no provision of the Act as alleged by petitioner was violated by respondent. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of letter dated 27-4-2006 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copy of order dated 22-4-2013 Ex. PW1/D, copy of letter dated 19-8-2013 Ex. PW1/E, copy of regularization order dated 21-1-2014 Ex. PW1/F, copy of joint representations dated 13-4-2004 & 13-4-2004 Mark-A1 and Mark-A2, list of junior Mark-A3, copy of Divisional level seniority lists of junior daily wagers Mark-A4/Ex. P1 & Mark-A5/Ex. P2, copy of joint representation dated 22-4-2008 Mark-A6, copy of representation dated 17-5-2013 Mark A7 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kapur, the then Executive Engineer, IPH Division Chamba as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart of petitioner and other workers Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-10-2017 for determination:—

- (1) Whether time to time termination of services of the petitioner by the respondent during year, 1997 to April, 2006 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) Whether the demand of regularization of daily wager service raised *vide* demand notice dated 30-03-2014 is legal and justified as alleged? ..*OPP.*
- (3) If issues No.1 or 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (5) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*

Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: No
Issue No. 5	: No
Relief	: Petition is partly allowed per operative part of award.

## REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the petitioner that he had been engaged by respondent on 1<sup>st</sup> April, 1997 who continuously worked till date but was regularized in October 2013. The grievance of petitioner remains two fold, firstly with regard to time to time break given from 1<sup>st</sup> March, 1997 to April 2006 by respondent deliberately with the object that petitioner did not complete 240 days so as to meet requirement of Section 25-B of Act and secondly after having been engaged in 1997 was liable to be regularized in 2007 as per policy of the government but due to break in service from 1997 to April 2006 he could not complete requisite criteria for regularization for government policy. As such, delay in regularization in October 2013 on account of intermittent break has also been challenged. To appreciate controversy in issue evidence adduced by parties in support of their respective claims needs to be gone through but at this stage before proceeding further, it would be apt to refer to documentary evidence.

12. Ex. P2 is the seniority list revealing workers engaged in the years 1997 to 2000 to have been regularized by respondent but were certainly junior to petitioner. This document further shows that those workmen who had been engaged later than petitioner were not given intermittent break in service rather had been given adequate work. Ex. PW1/C is the mandays chart dealing with month-wise working days of petitioner from 1st April, 1997 to 31-10-2013. A bare glance at mandays chart Ex. PW1/C would show that petitioner had worked for 135 days in the year 1997, 180 days in 1998, 183 days in 1999, 194 days in 2000, 191 days in 2001, 201 days in 2002, 206 days in 2003, 204 days in 2004, 215 days in 2005, 315 days in 2006, 360 days in 2007, 363 days in 2008, 365 days in 2009, 365 days in 2010, 363 days in 2011, 364 days in 2012 and 276 days in 2013. This document clearly shows that petitioner had been given full month work from 1-4-2006 and prior to it petitioner was engaged only for 17 to 19 days in each month which further strengthens plea of petitioner that breaks in service prior to April, 2006 had been deliberately given by respondent as other co-workmen as discussed above had been given work for full month during that period although they were engaged in 1997 whereas petitioner had been engaged from 1st April, 1997. The fact that respondent had given deliberate intermittent breaks to petitioner can be safely gathered from Ex. P2 as co-workmen shown in it were admittedly junior to petitioner who had been regularized in 2007. It further finds support from cross-examination of RW1 Shri Dinesh Kapur, Executive Engineer, IPH Chamba as contesting respondent who revealed that co-workmen reflected in Ex. P2 at Sl. Nos. 1 to 87 had been regularized and were junior to petitioner and thus claim of petitioner gets further strengthened not only from cross-examination of RW1 but also from documentary evidence establishing that junior to petitioner had not been given intermittent breaks who had been regularized in 2007 whereas petitioner has been regularized in October 2013 who had joined much prior to these coworkers as stated above.

13. Ld. Dy. D.A. for the respondent has vehemently argued that petitioner is working ever since April 1997 whose service had been regularized in October 2013 and the delay in regularization took place due to break in service as stated above. On the other hand, Ld. Authorized Representative for petitioner has denied benefit of seniority and continuity in service to which he was entitled but for he was denied the regularization from initial engagement by respondent under the garb of intermittent breaks which has been established by petitioner by adducing reliable evidence on record this score. Certainly, when intermittent breaks had been given to petitioner from his initial engagement till April 2006 the delay in regularization was obvious as it has been established on record that intermittent breaks were deliberately given to petitioner prior to April

2006 rather after instructions issued *vide* letter dated 27.3.2006 Ex. PW1/B govt. of H.P. to respondent and all other field staff to give work to daily wage beldar for full month. As such, I find no substance in arguments advanced by Ld. Dy.D.A. for respondent that intermittent break was not deliberate and accordingly, it is held that intermittent breaks till April 2006 as stated above were deliberately given so that petitioner did not complete 240 days in a year so as to avail benefit of Section 25-B of Act.

14. In so far as petitioner having not been gainfully employed during intermittent break as stated above, suffice would be to state here that petitioner in his cross-examination has specifically admitted that he had cultivable land and thus had livelihood therefrom. As such, it cannot be stated that petitioner had not remained gainfully employed during intermittent break period. I am supported by judgment of Hon'ble Apex Court in **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '*term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same*'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled back-wages. Accordingly, issue No. 1 is answered in affirmative in favour of petitioner and against the respondent.

15. In so far as claim of petitioner for regularization after 10 years of service as raised in his demand notice dated 30-3-2014 is concerned, it has been discussed in foregoing paras that due to deliberate breaks petitioner could not be regularized in the year 2007 as other co-workmen who were junior to him and thus petitioner too would be entitled for regularization after 10 years of service from his initial engagement. Merely because petitioner had been regularized is not sufficient to dislodge petitioner from claim for being regularized from his initial engagement from the year 1997 as disparity had been created by respondent in regularizing co-workmen who were junior to him under the garb of intermittent breaks. Be it noticed that respondent had sufficient work and funds and there was no reason for respondent to have not given work to petitioner for full month moreso when other co-workmen had been given work whose service had been regularized and thus petitioner too would be entitled for regularization like his colleagues *i.e.* co-workmen as has come in evidence from his initial engagement in service after requisite period of service required under the government policy for regularization. Be it noticed that respondent's document which is coming from custody of petitioner Ex. PW1/E dated 19-8-2013 with regard to references No. 212/12 (Tilak Raj), 217/12 (Pawan Kumar), 318/12 (Vijay Kumar), 232/12 (Kewal Krishan), 213/12 (Raj Kumar), 214/12 (Shamsher Singh), 215/12 Hem Raj & 216/12 (Ajay Kumar), all the workmen have been regularized as law department opined that workmen had been held entitled to seniority and continuity in service from the date of their initial engagement except back wages. Ex. PW1/F is the order dated 21-1-2014 of Superintending Engineer, IPH Circle Chamba giving effect to letter dated 19-8-2013. Ex. PW1/F further shows that date of deemed regularization *w.e.f.* 20-10-2007 as Chattro Keso Ram, Nidhia Ram & Gurditta which shows that all these workmen had been regularized after 10 years of service. Issue no. 2 is answered in affirmative in favour of petitioner and against respondent. Issue no. 3 is answered in favour of petitioner as discussed above. All these issues are answered accordingly.

*Issue No. 4:*

16. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Issue No. 5:*

17. In so far as plea of delay and laches raising the dispute by petitioner is concerned, suffice would be to state here that petitioner had been continuously working with respondent after having been engaged from 1st March, 1997 till his regularization *i.e.* October, 2013 and the intermittent breaks which had been given from 1st March, 1997 to April, 2006 were agitated by petitioner by making representations as can be gathered from para No.8 of claim petition as also finds mentioned in affidavit Ex. PW1/A which shows that petitioner had made several requests with the respondent and thereafter matter had got into notice of government by trade union and thereafter under instructions *vide* letter No.IPH(A)2(B)1-2-2003-Part dated 27th March, 2006 Ex. PW1/B had been issued to all the Executive Engineers I&PH Department with directions to give work for full month basis. As such, after instructions from the government, petitioner had given regular work and thus delay in raising demand notice in 2014 cannot be stated to have remained unexplained as petitioner had been given work for full month after the instructions of government as stated above. Thus, the delay is satisfactorily explained which could not be stated to be deliberate on account of negligence of petitioner. Moreover, respondent has not disputed issuance of instructions to field staff to PWD/IPH for giving full work after March, 2006. As such, claim petition could not be stated to be barred by delay and laches as pleaded by respondent. This issue is answered in favour of petitioner and against the respondent.

*Relief:*

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement till April, 2006 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back- wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 155/2016  
Date of Institution : 17-03-2016  
Date of Decision : 13-09-2018

Shri Yash Pal s/o Shri Duni Chand, r/o Village Millah, P.O. Singi, Tehsil and District  
Chamba, H.P. ..*Petitioner.*

*Versus*

The Executive Engineer, I.&P.H. Division Chamba, District Chamba, H.P. ..*Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, AR  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

1. “Whether alleged time to time termination of services of Shri Yash Pal s/o Shri Duni Chand, r/o Village Millah, P.O. Singi, Tehsil and District Chamba, H.P. during the year 1998 to April, 2006 by the Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P., who had worked as beldar on daily wages basis and has raised his industrial dispute after more than 7 years *vide* demand notice dated 30-03-2014, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits the above worker is entitled to from the above employer/management?”
2. “Whether the demand of regularization of daily wager services raised *vide* demand notice dated 30-03-2014 after more than 7 years of Shri Yash Pal s/o Shri Duni Chand, r/o Village Millah, P.O. Singi, Tehsil and District Chamba, H.P. to be fulfilled by Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P. from the date of his junior workmen have been regularized, as alleged by the worker, is legal and justified? If not, what arrear of wages and consequential relief of service benefits the above worker is entitled to from the above employer/management?”
2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.
3. Averments made in the claim petition reveal that petitioner had been engaged in the month of August, 1998 on muster roll basis by respondent as daily waged beldar who continuously worked till October 2013 when his services had been regularized after about 15 years in the month of October 2013. The grievance of petitioner as can be gathered from the claim petition reveal that respondent had given fictional/artificial breaks to petitioner by allowing to him work only for about 18 days in a month so that petitioner did not complete 240 days and could get benefit of Section 25-B of Industrial Disputes Act, 1947 (hereinafter called the "Act" for brevity). It is alleged that

cessation of work for period of intermittent break for 12 to 13 days in each month from 1998 to April, 2006 for about nine years had been given due to which petitioner could not complete 240 days as stated above. Accordingly, having not completed 240 days in a year for the purpose of regularization of daily wage service the petitioner was not put into work charge cadre. It is alleged that service of petitioner has been interrupted by respondent by allowing him to allocate work for 18 days in a month whereas other junior workmen engaged on muster roll much after the petitioner had been given regular work in a month particularly co-workmen who had been engaged in the years 1998 and 1999 respectively. Thus, while allocating to work to junior and not allocating work to petitioner clearly established existence of sufficient budget and work and thus violated Section 25-G of Act which also amounts to unfair labour practice. It is claimed that junior workmen whose names had been reflected in Annexure P1 were junior to petitioner but were regularized after eight years and had completed 240 days in each year but contrarily due to break in service petitioner could not be regularized. It is claimed that all these workmen have been allowed retrospective regularization on completion of eight years of service in view of judgment of Hon'ble High Court of H.P. titled as Rakesh Kumar vs. State of H.P. and Ors. It is alleged that without any rhyme or reason, respondent had given break in service to petitioner discriminating against other co-workmen who were junior to petitioner and given work for full month. Accordingly, petitioner prays that period of intermittent illegal/artificial breaks given by respondent from time to time between 1998 to April, 2006 be declared illegal and unjustified and respondent be directed to count the period as continuous service for the purpose of 240 days in each calendar year from 1998 to 2006 as stated above besides back-wages and other consequential benefits and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been working continuously on daily wage basis but was not given break intermittently from 1998 to 2006 deliberately as claimed by petitioner rather after 2006 as stated above petitioner had been given work regularly. It is emphatically denied that fictional breaks had been given to petitioner deliberately so that he could complete 240 days besides as and when petitioner completed requisite criteria for regularization as per government policy he was regularized in the month of October 2013. It has been denied that any junior workmen to the petitioner had been regularized in service rather only those workmen were regularized by respondent/department who had continuously worked with the respondent and fulfilled criteria for regularization as per government policy for regularization besides no provision of the Act as alleged by petitioner was violated by respondent. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of letter dated 27-4-2006 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copy of order dated 22-4-2013 Ex. PW1/D, copy of letter dated 19-8-2013 Ex. PW1/E, copy of regularization order dated 21-1-2014 Ex. PW1/F, copy of joint representations dated 13-4-2004 & 13-4-2004 Mark-A1 and Mark-A2, list of junior Mark-A3, copy of Divisional level seniority lists of junior daily wagers Mark- A4/Ex. P1 & Mark-A5/Ex. P2, copy of joint representation dated 22-4-2008 Mark-A6, copy of representation dated 17-5-2013 Mark A7 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kapur, the then Executive Engineer, IPH Division Chamba as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart of petitioner and other workers Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-10-2017 for determination:—

- (1) Whether time to time termination of services of the petitioner by respondent during year 1998 to April 2006 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) Whether the demand of regularization of daily wagger service raised *vide* demand notice dated 30-3-2014 is legal and justified as alleged? ..*OPP*.
- (3) If issue no. 1 or No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (5) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.

Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: No
Issue No. 5	: No
Relief	: Petition is partly allowed per operative part of award.

#### REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the petitioner that he had been engaged by respondent on 1<sup>st</sup> September, 1998 who continuously worked till date but was regularized in October, 2013. The grievance of petitioner remains two fold, firstly with regard to time to time break given from 1<sup>st</sup> September, 1998 to April, 2006 by respondent deliberately with the object that petitioner did not complete 240 days so as to meet requirement of Section 25-B of Act and secondly after having been engaged in 1998 was liable to be regularized in 2007 as per policy of the government but due to break in service from 1998 to April, 2006 he could not complete requisite criteria for regularization for government policy. As such, delay in regularization in October, 2013 on account of intermittent break has also been challenged. To appreciate controversy in issue evidence adduced by parties in support of their respective claims needs to be gone through but at this stage before proceeding further, it would be apt to refer to documentary evidence.

12. Ex. P2 is the seniority list revealing workers engaged in the years 1998 to 2000 to have been regularized by respondent but were certainly junior to petitioner. This document further shows that those workmen who had been engaged later than petitioner were not given intermittent break in service rather had been given adequate work. Ex. PW1/C is the mandays chart dealing with month-wise working days of petitioner from 1st September, 1998 to 31-10-2013. A bare glance at mandays chart Ex. PW1/C would show that petitioner had worked for 62 days in the year 1998, 188



days in 1999, 189 days in 2000, 206 days in 2001, 195 days in 2002, 206 days in 2003, 204 days in 2004, 213 days in 2005, 315 days in 2006, 365 days in 2007, 332 days in 2008, 336 days in 2009, 365 days in 2010, 363 days in 2011, 364 days in 2012 and 276 days in 2013. This document clearly shows that petitioner had been given full month work from 1-4-2006 and prior to it petitioner was engaged only for 17 to 19 days in each month which further strengthens plea of petitioner that breaks in service prior to April, 2006 had been deliberately given by respondent as other co-workmen as discussed above had been given work for full month during that period although they were engaged in 1999 whereas petitioner had been engaged from 1st September, 1998. The fact that respondent had given deliberate intermittent breaks to petitioner can be safely gathered from Ex. P2 as co-workmen shown in it were admittedly junior to petitioner who had been regularized in 2007. It further finds support from cross-examination of RW1 Shri Dinesh Kapur, Executive Engineer, IPH Chamba as contesting respondent who revealed that co-workmen reflected in Ex. P2 at Sl. nos. 1 to 87 had been regularized and were junior to petitioner and thus claim of petitioner gets further strengthened not only from cross-examination of RW1 but also from documentary evidence establishing that junior to petitioner had not been given intermittent breaks who had been regularized in 2007 whereas petitioner has been regularized in October, 2013 who had joined much prior to these co-workmen as stated above.

13. Ld. Dy. D.A. for the respondent has vehemently argued that petitioner is working ever since September, 1998 whose service had been regularized in October, 2013 and the delay in regularization took place due to break in service as stated above. On the other hand, Ld. Authorized Representative for petitioner has denied benefit of seniority and continuity in service to which he was entitled but for he was denied the regularization from initial engagement by respondent under the garb of intermittent break which has been established by petitioner by adducing reliable evidence on this score. Certainly, when intermittent breaks had been given to petitioner from his initial engagement till April, 2006 the delay in regularization was obvious as it has been established on record that intermittent breaks were deliberately given to petitioner prior to April, 2006 rather after instructions issued *vide* letter dated 27-3-2006 Ex. PW1/B govt. of H.P. to respondent and all other field staff to give work to daily wage beldar for full month. As such, I find no substance in arguments advanced by Ld. Dy.D.A. for respondent that intermittent break was not deliberate and accordingly, it is held that intermittent breaks till April, 2006 as stated above were deliberately given so that petitioner did not complete 240 days in a year so as to avail benefit of Section 25-B of Act.

14. In so far as petitioner having not been gainfully employed during intermittent break as stated above, suffice would be to state here that petitioner in his cross-examination has specifically admitted that he had cultivable land and thus had livelihood therefrom. As such, it cannot be stated that petitioner had not remained gainfully employed during intermittent break period I am supported by judgment of Hon'ble Apex Court in **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '*term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same*'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled back wages. Accordingly, issue No. 1 is answered in affirmative in favour of petitioner and against the respondent.

15. In so far as claim of petitioner for regularization after 10 years of service as raised in his demand notice dated 30-3-2014 is concerned, it has been discussed in foregoing paras that due

to deliberate breaks petitioner could not be regularized in the year 2007 as other co-workmen who were junior to him and thus petitioner too would be entitled for regularization after 10 years of service from his initial engagement. Merely because petitioner had been regularized is not sufficient to dislodge petitioner from claim for being regularized from his initial engagement from the year 1998 as disparity had been created by respondent in regularizing co-workmen who were junior to him under the garb of intermittent breaks. Be it noticed that respondent had sufficient work and funds and there was no reason for respondent to have not given work to petitioner for full month moreso when other co-workmen had been given work whose service had been regularized and thus petitioner too would be entitled for regularization like his colleagues *i.e.* co-workmen as has come in evidence from his initial engagement in service after requisite period of service required under the government policy for regularization. Be it noticed that respondent's document which is coming from custody of petitioner Ex. PW1/E dated 19-8-2013 with regard to references No.212/12 (Tilak Raj), 217/12 (Pawan Kumar), 318/12 (Vijay Kumar), 232/12 (Kewal Krishan), 213/12 (Raj Kumar), 214/12 (Shamsher Singh), 215/12 Hem Raj & 216/12 (Ajay Kumar), all the workmen have been regularized as law department opined that workmen had been held entitled to seniority and continuity in service from the date of their initial engagement except back wages. Ex. PW1/F is the order dated 21-1-2014 of Superintending Engineer, IPH Circle Chamba giving effect to letter dated 19-8-2013. Ex. PW1/F further shows that date of deemed regularization *w.e.f.* 20-10-2007 as Chattro Keso Ram, Nidhia Ram & Gurditta which shows that all these workmen had been regularized after 10 years of service. Issue No. 2 is answered in affirmative in favour of petitioner and against respondent. Issue No. 3 is answered in favour of petitioner as discussed above. All these issues are answered accordingly.

*Issue No. 4:*

16. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Issue No. 5:*

17. In so far as plea of delay and laches raising the dispute by petitioner is concerned, suffice would be to state here that petitioner had been continuously working with respondent after having been engaged from 1st September, 1998 till his regularization *i.e.* October, 2013 and the intermittent breaks which had been given from 1st September, 1998 to April, 2006 were agitated by petitioner by making representations as can be gathered from para No. 8 of claim petition as also finds mentioned in affidavit Ex. PW1/A which shows that petitioner had made several requests with the respondent and thereafter matter had got into notice of government by trade union and thereafter under instructions *vide* letter No.IPH(A)2(B)1-2-2003-Part dated 27<sup>th</sup> March, 2006 Ex. PW1/B had been issued to all the Executive Engineers I&PH Department with directions to give work for full month basis. As such, after instructions from the government, petitioner had given regular work and thus delay in raising demand notice in 2014 cannot be stated to have remained unexplained as petitioner had been given work for full month after the instructions of government as stated above. Thus, the delay is satisfactorily explained which could not be stated to be deliberate on account of negligence of petitioner. Moreover, respondent has not disputed issuance of instructions to field staff to PWD/IPH for giving full work after March, 2006. As such, claim petition could not be stated to be barred by delay and laches as pleaded by respondent. This issue is answered in favour of petitioner and against the respondent.

*Relief:*

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement till April, 2006 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back-wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 151/2016  
Date of Institution : 17-03-2016  
Date of Decision : 13-09-2018

Shri Devi Chand s/o Shri Munshi Ram, r/o Village Salga, P.O. Chaned, Tehsil and District  
Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I.&P.H. Division Chamba, District Chamba, H.P. *..Respondent.*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

## AWARD

The reference given below has been received from the appropriate Government for adjudication:—

1. “Whether alleged time to time termination of services of Shri Devi Chand s/o Shri Munshi Ram, r/o Village Salga, P.O. Chaned, Tehsil and District Chamba, H.P. during the year 1995 to April, 2006 by the Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P., who had worked as beldar on daily wages basis and has raised his industrial dispute after more than 7 years *vide* demand notice dated 30-03-2014, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits the above worker is entitled to from the above employer/management?”
2. Whether the demand of regularization of daily wage services raised *vide* demand notice dated 30-03-2014 after more than 7 years of Shri Devi Chand s/o Shri Munshi Ram, r/o Village Salga, P.O. Chaned, Tehsil and District Chamba, H.P. to be fulfilled by Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P. from the date of his junior workmen have been regularized, as alleged by the worker, is legal and justified? If not, what arrear of wages and consequential relief of service benefits the above worker is entitled to from the above employer/management?”
2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.
3. Averments made in the claim petition reveal that petitioner had been engaged in the month of September, 1995 on muster-roll basis by respondent as daily waged beldar who continuously worked till October, 2013 when his services had been regularized after about 21 years in the month of October, 2013. The grievance of petitioner as can be gathered from the claim petition reveal that respondent had given fictional/artificial breaks to petitioner by allowing to him work only for about 18 days in a month so that petitioner did not complete 240 days and could get benefit of Section 25-B of Industrial Disputes Act, 1947 (hereinafter called the "Act" for brevity). It is alleged that cessation of work for period of intermittent break for 12 to 13 days in each month from 1995 to April, 2006 for about nine years had been given due to which petitioner could not complete 240 days as stated above. Accordingly, having not completed 240 days in a year for the purpose of regularization of daily wage service the petitioner was not put into work charge cadre. It is alleged that service of petitioner has been interrupted by respondent by allowing him to allocate work for 18 days in a month whereas other junior workmen engaged on muster roll much after the petitioner had been given regular work in a month particularly co-workmen who had been engaged in the years 1996, 1997, 1998 and 1999 respectively. Thus, while allocating to work to junior and not allocating work to petitioner clearly established existence of sufficient budget and work and thus violated Section 25-G of Act which also amounts to unfair labour practice. It is claimed that junior workmen whose names had been reflected in Annexure P1 were junior to petitioner but were regularized after eight years and had completed 240 days in each year but contrarily due to break in service petitioner could not be regularized. It is claimed that all these workmen have been allowed retrospective regularization on completion of eight years of service in view of judgment of Hon'ble High Court of H.P. titled as Rakesh Kumar Vs. State of H.P. and Ors. It is alleged that without any rhyme or reason, respondent had given break in service to petitioner discriminating against other co-workmen who were junior to petitioner and given work for full month. Accordingly, petitioner prays that period of intermittent illegal/artificial breaks given by respondent from time to time between 1995 to April, 2006 be declared illegal and unjustified and respondent be directed to count

the period as continuous service for the purpose of 240 days in each calendar year from 1995 to 2006 as stated above besides back wages and other consequential benefits and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been working continuously on daily wage basis but was not given break intermittently from 1995 to 2006 deliberately as claimed by petitioner rather after 2006 as stated above petitioner had been given work regularly. It is emphatically denied that fictional breaks had been given to petitioner deliberately so that he could complete 240 days besides as and when petitioner completed requisite criteria for regularization as per government policy he was regularized in the month of October, 2013. It has been denied that any junior workmen to the petitioner had been regularized in service rather only those workmen were regularized by respondent/department who had continuously worked with the respondent and fulfilled criteria for regularization as per government policy for regularization besides no provision of the Act as alleged by petitioner was violated by respondent. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of letter dated 27-4-2006 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copy of order dated 22-4-2013 Ex. PW1/D, copy of letter dated 19-8-2013 Ex. PW1/E, copy of regularization order dated 21-1-2014 Ex. PW1/F, copy of joint representations dated 13-4-2004 & 13-4-2004 Mark-A1 and Mark-A2, list of junior Mark-A3, copy of Divisional level seniority lists of junior daily wagers Mark-A4/Ex. P1 & Mark-A5/Ex. P2, copy of joint representation dated 22-4-2008 Mark-A6, copy of representation dated 17-5-2013 Mark A7 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kapur, the then Executive Engineer, IPH Division Chamba as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart of petitioner and other workers Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-10-2017 for determination:—

- (1) Whether time to time termination of services of the petitioner by the respondent during year, 1995 to April, 2006 is/was illegal and unjustified as alleged? ..OPP.
- (2) Whether the demand of regularization of daily wage service raised *vide* demand notice dated 30-03-2014 is legal and justified as alleged? ..OPP.
- (3) If issues No. 1 or 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (5) Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: No
Issue No. 5	: No
Relief	: Petition is partly allowed per operative part of award.

### REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the petitioner that he had been engaged by respondent on 18<sup>th</sup> September, 1995 who continuously worked till date but was regularized in October, 2013. The grievance of petitioner remains two fold, firstly with regard to time to time break given from 18<sup>th</sup> September, 1995 to April, 2006 by respondent deliberately with the object that petitioner did not complete 240 days so as to meet requirement of Section 25-B of Act and secondly after having been engaged in 1996 was liable to be regularized in 2007 as per policy of the government but due to break in service from 1995 to April, 2006 he could not complete requisite criteria for regularization for government policy. As such, delay in regularization in October, 2013 on account of intermittent break has also been challenged. To appreciate controversy in issue evidence adduced by parties in support of their respective claims needs to be gone through but at this stage before proceeding further, it would be apt to refer to documentary evidence.

12. Ex. P2 is the seniority list revealing workers engaged in the years 1996 to 2000 to have been regularized by respondent but were certainly junior to petitioner. This document further shows that those workmen who had been engaged later than petitioner were not given intermittent break in service rather had been given adequate work. Ex. PW1/C is the mandays chart dealing with month-wise working days of petitioner from 18<sup>th</sup> September, 1995 to 31-10-2013. A bare glance at mandays chart Ex. PW1/C would show that petitioner had worked for 105 days in the year 1995, 260 days in 1996, 155 days in 1997, 175 days in 1998, 169 days in 1999, 199 days in 2000, 199 days in 2001, 199 days in 2002, 204 days in 2003, 202 days in 2004, 218 days in 2005, 317 days in 2006, 351 days in 2007, 347 days in 2008, 360 days in 2009, 365 days in 2010, 365 days in 2011, 364 days in 2012 and 276 days in 2013. This document clearly shows that petitioner had been given full month work from 1-4-2006 and prior to it petitioner was engaged only for 17 to 19 days in each month which further strengthens plea of petitioner that breaks in service prior to April, 2006 had been deliberately given by respondent as other co-workmen as discussed above had been given work for full month during that period although they were engaged in 1996 whereas petitioner had been engaged from 18<sup>th</sup> September, 1995. The fact that respondent had given deliberate intermittent breaks to petitioner can be safely gathered from Ex. P2 as co-workmen shown in it were admittedly junior to petitioner who had been regularized in 2007. It further finds support from cross-examination of RW1 Shri Dinesh Kapur, Executive Engineer, IPH Chamba as contesting respondent who revealed that co-workmen reflected in Ex. P2 at Sl. Nos.1 to 87 had been regularized and were junior to petitioner and thus claim of petitioner gets further strengthened not only from cross-examination of RW1 but also from documentary evidence establishing that junior to petitioner had not been given intermittent breaks who had been regularized in 2007 whereas petitioner has been regularized in October, 2013 who had joined much prior to these co-workmen as stated above.

13. Ld. Dy. D.A. for the respondent has vehemently argued that petitioner is working ever since September, 1995 whose service had been regularized in October, 2013 and the delay in regularization took place due to break in service as stated above. On the other hand, Ld. Authorized Representative for petitioner has denied benefit of seniority and continuity in service to which he was entitled but for he was denied the regularization from initial engagement by respondent under the garb of intermittent breaks which has been established by petitioner by adducing reliable evidence on record this score. Certainly, when intermittent breaks had been given to petitioner from his initial engagement till April, 2006 the delay in regularization was obvious as it has been established on record that intermittent breaks were deliberately given to petitioner prior to April, 2006 rather after instructions issued *vide* letter dated 27-3-2006 Ex. PW1/B govt. of H.P. to respondent and all other field staff to give work to daily wage beldar for full month. As such, I find no substance in arguments advanced by Ld. Dy.D.A. for respondent that intermittent break was not deliberate and accordingly, it is held that intermittent breaks till April, 2006 as stated above were deliberately given so that petitioner did not complete 240 days in a year so as to avail benefit of Section 25-B of Act.

14. In so far as petitioner having not been gainfully employed during intermittent break as stated above, suffice would be to state here that petitioner in his cross-examination has specifically admitted that he had cultivable land and thus had livelihood therefrom. As such, it cannot be stated that petitioner had not remained gainfully employed during intermittent break period. I am supported by judgment of Hon'ble Apex Court in **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '*term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same*'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled back-wages. Accordingly, issue No. 1 is answered in affirmative in favour of petitioner and against the respondent.

15. In so far as claim of petitioner for regularization after 10 years of service as raised in his demand notice dated 30-3-2014 is concerned, it has been discussed in foregoing paras that due to deliberate breaks petitioner could not be regularized in the year 2007 as other co-workmen who were junior to him and thus petitioner too would be entitled for regularization after 10 years of service from his initial engagement. Merely because petitioner had been regularized is not sufficient to dislodge petitioner from claim for being regularized from his initial engagement from the year 1995 as disparity had been created by respondent in regularizing co-workmen who were junior to him under the garb of intermittent breaks. Be it noticed that respondent had sufficient work and funds and there was no reason for respondent to have not given work to petitioner for full month moreso when other co-workmen had been given work whose service had been regularized and thus petitioner too would be entitled for regularization like his colleagues *i.e.* co-workmen as has come in evidence from his initial engagement in service after requisite period of service required under the government policy for regularization. Be it noticed that respondent's document which is coming from custody of petitioner Ex. PW1/E dated 19-8-2013 with regard to references No. 212/12 (Tilak Raj), 217/12 (Pawan Kumar), 318/12 (Vijay Kumar), 232/12 (Kewal Krishan), 213/12 (Raj Kumar), 214/12 (Shamsher Singh), 215/12 Hem Raj & 216/12 (Ajay Kumar), all the workmen have been regularized as law department opined that workmen had been held entitled to seniority and continuity in service from the date of their initial engagement except back wages. Ex. PW1/F is the order dated 21-1-2014 of Superintending Engineer, IPH Circle Chamba giving effect

to letter dated 19-8-2013. Ex. PW1/F further shows that date of deemed regularization *w.e.f.* 20-10-2007 as Chattro Keso Ram, Nidhia Ram & Gurditta which shows that all these workmen had been regularized after 10 years of service. Issue No. 2 is answered in affirmative in favour of petitioner and against respondent. Issue No. 3 is answered in favour of petitioner as discussed above. All these issues are answered accordingly.

*Issue No. 4:*

16. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Issue No. 5:*

17. In so far as plea of delay and laches raising the dispute by petitioner is concerned, suffice would be to state here that petitioner had been continuously working with respondent after having been engaged from 18th September, 1995 till his regularization *i.e.* October, 2013 and the intermittent breaks which had been given from 18th September, 1995 to April, 2006 were agitated by petitioner by making representations as can be gathered from para No. 8 of claim petition as also finds mentioned in affidavit Ex. PW1/A which shows that petitioner had made several requests with the respondent and thereafter matter had got into notice of government by trade union and thereafter under instructions *vide* letter No.IPH(A)2(B)1-2-2003-Part dated 27<sup>th</sup> March, 2006 Ex. PW1/B had been issued to all the Executive Engineers I&PH Department with directions to give work for full month basis. As such, after instructions from the government, petitioner had given regular work and thus delay in raising demand notice in 2014 cannot be stated to have remained unexplained as petitioner had been given work for full month after the instructions of government as stated above. Thus, the delay is satisfactorily explained which could not be stated to be deliberate on account of negligence of petitioner. Moreover, respondent has not disputed issuance of instructions to field staff to PWD/IPH for giving full work after March, 2006. As such, claim petition could not be stated to be barred by delay and laches as pleaded by respondent. This issue is answered in favour of petitioner and against the respondent.

*Relief:*

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement till April, 2006 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.



21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Dharamshala, H.P.*

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 152/2016  
Date of Institution : 17-03-2016  
Date of Decision : 13-09-2018

Shri Daleep Chand s/o Shri Prakash Chand, r/o Village Bhanota, P.O. Chaned, Tehsil and District Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I.&P.H. Division Chamba, District Chamba, H.P. ..Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, AR  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

1. “Whether alleged time to time termination of services of Shri Daleep Chand s/o Shri Prakash Chand, r/o Village Bhanota, P.O. Chaned, Tehsil and District Chamba, H.P. during the year 1997 to April, 2006 by the Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P., who had worked as beldar on daily wages basis and has raised his industrial dispute after more than 7 years *vide* demand notice dated 30-03-2014, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period and delay of more than 7 years in raising the industrial dispute, what amount of back-wages, seniority, past service benefits the above worker is entitled to from the above employer/management?”
2. Whether the demand of regularization of daily wagger services raised *vide* demand notice dated 30-03-2014 after more than 7 years of Shri Daleep Chand s/o Shri Prakash Chand, r/o Village Bhanota, P.O. Chaned, Tehsil and District Chamba, H.P. to be fulfilled by Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P. from the date of his junior workmen have been regularized, as alleged by the worker, is

legal and justified? If not, what arrear of wages and consequential relief of service benefits the above worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Averments made in the claim petition reveal that petitioner had been engaged in the month of March, 1997 on muster roll basis by respondent as daily waged beldar who continuously worked till October, 2013 when his services had been regularized after about 17 years in the month of October, 2013. The grievance of petitioner as can be gathered from the claim petition reveal that respondent had given fictional/artificial breaks to petitioner by allowing to him work only for about 18 days in a month so that petitioner did not complete 240 days and could get benefit of Section 25-B of Industrial Disputes Act, 1947 (hereinafter called the "Act" for brevity). It is alleged that cessation of work for period of intermittent break for 12 to 13 days in each month from 1997 to April, 2006 for about nine years had been given due to which petitioner could not complete 240 days as stated above. Accordingly, having not completed 240 days in a year for the purpose of regularization of daily wage service the petitioner was not put into work charge cadre. It is alleged that service of petitioner has been interrupted by respondent by allowing him to allocate work for 18 days in a month whereas other junior workmen engaged on muster roll much after the petitioner had been given regular work in a month particularly co-workmen who had been engaged in the years 1997, 1998 and 1999 respectively. Thus, while allocating to work to junior and not allocating work to petitioner clearly established existence of sufficient budget and work and thus violated Section 25-G of Act which also amounts to unfair labour practice. It is claimed that junior workmen whose names had been reflected in Annexure P1 were junior to petitioner but were regularized after eight years and had completed 240 days in each year but contrarily due to break in service petitioner could not be regularized. It is claimed that all these workmen have been allowed retrospective regularization on completion of eight years of service in view of judgment of Hon'ble High Court of H.P. titled as Rakesh Kumar Vs. State of H.P. and Ors. It is alleged that without any rhyme or reason, respondent had given break in service to petitioner discriminating against other co-workmen who were junior to petitioner and given work for full month. Accordingly, petitioner prays that period of intermittent illegal/artificial breaks given by respondent from time to time between 1997 to April, 2006 be declared illegal and unjustified and respondent be directed to count the period as continuous service for the purpose of 240 days in each calendar year from 1997 to 2006 as stated above besides back wages and other consequential benefits and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been working continuously on daily wage basis but was not given break intermittently from 1997 to 2006 deliberately as claimed by petitioner rather after 2006 as stated above petitioner had been given work regularly. It is emphatically denied that fictional breaks had been given to petitioner deliberately so that he could complete 240 days besides as and when petitioner completed requisite criteria for regularization as per government policy he was regularized in the month of October, 2013. It has been denied that any junior workmen to the petitioner had been regularized in service rather only those workmen were regularized by respondent/department who had continuously worked with the respondent and fulfilled criteria for regularization as per government policy for regularization besides no provision of the Act as alleged by petitioner was violated by respondent. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of letter dated 27-4-2006 Ex. PW1/B,

copy of mandays chart Ex. PW1/C, copy of order dated 22-4-2013 Ex. PW1/D, copy of letter dated 19-8-2013 Ex. PW1/E, copy of regularization order dated 21-1-2014 Ex. PW1/F, copy of joint representations dated 13-4-2004 & 13-4-2004 Mark-A1 and Mark-A2, list of junior Mark-A3, copy of Divisional level seniority lists of junior daily wagers Mark-A4/Ex. P1 & Mark-A5/Ex. P2, copy of joint representation dated 22-4-2008 Mark-A6, copy of representation dated 17-5-2013 Mark A7 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kapur, the then Executive Engineer, IPH Division Chamba as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart of petitioner and other workers Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30-11-2017 for determination:—

- (1) Whether time to time termination of services of petitioner by respondent during year 1997 to April, 2006 is/was illegal and unjustified as alleged. If so, its effect? ..*OPP*.
- (2) Whether the demand raised *vide* demand notice dated 30-3-2014 by the petitioner regarding regularization of his daily wages services from the date of regularization of his juniors by the respondent/department is illegal and unjustified as alleged. If so, its effect? ..*OPP*.
- (3) If issue No.1 and issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.
- (5) Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? ..*OPR*.

Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Issue No. 5	: No
Relief	: Petition is partly allowed per operative part of award.

#### REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the petitioner that he had been engaged by respondent on 1<sup>st</sup> March, 1997 who continuously worked till date but was regularized in October, 2013. The grievance of petitioner remains two fold, firstly with regard to time to time break given from 1<sup>st</sup> March, 1997 to April, 2006 by respondent deliberately with the object that petitioner did not

complete 240 days so as to meet requirement of Section 25-B of Act and secondly after having been engaged in 1997 was liable to be regularized in 2007 as per policy of the government but due to break in service from 1997 to April, 2006 he could not complete requisite criteria for regularization for government policy. As such, delay in regularization in October, 2013 on account of intermittent break has also been challenged. To appreciate controversy in issue evidence adduced by parties in support of their respective claims needs to be gone through but at this stage before proceeding further, it would be apt to refer to documentary evidence.

12. Ex. P2 is the seniority list revealing workers engaged in the years 1997 to 2000 to have been regularized by respondent but were certainly junior to petitioner. This document further shows that those workmen who had been engaged later than petitioner were not given intermittent break in service rather had been given adequate work. Ex. PW1/C is the mandays chart dealing with month-wise working days of petitioner from 1st March 1997 to 31-10-2013. A bare glance at mandays chart Ex. PW1/C would show that petitioner had worked for 69 days in the year 1997, 152 days in 1998, 186 days in 1999, 197 days in 2000, 204 days in 2001, 205 days in 2002, 206 days in 2003, 205 days in 2004, 218 days in 2005, 313 days in 2006, 363 days in 2007, 363 days in 2008, 363 days in 2009, 365 days in 2010, 353 days in 2011 364 days in 2012 and 364 days in 2013. This document clearly shows that petitioner had been given full month work from 1-4-2006 and prior to it petitioner was engaged only for 17 to 19 days in each month which further strengthens plea of petitioner that breaks in service prior to April, 2006 had been deliberately given by respondent as other co-workmen as discussed above had been given work for full month during that period although they were engaged in 1997 whereas petitioner had been engaged from 1st March, 1997. The fact that respondent had given deliberate intermittent breaks to petitioner can be safely gathered from Ex. P2 as co-workmen shown in it were admittedly junior to petitioner who had been regularized in 2007. It further finds support from cross-examination of RW1 Shri Dinesh Kapur, Executive Engineer, IPH Chamba as contesting respondent who revealed that co-workmen reflected in Ex. P2 at Sl. Nos.1 to 87 had been regularized and were junior to petitioner and thus claim of petitioner gets further strengthened not only from cross-examination of RW1 but also from documentary evidence establishing that junior to petitioner had not been given intermittent breaks who had been regularized in 2007 whereas petitioner has been regularized in October, 2013 who had joined much prior to these co-workmen as stated above.

13. Ld. Dy. D.A. for the respondent has vehemently argued that petitioner is working ever since March, 1997 whose service had been regularized in October, 2013 and the delay in regularization took place due to break in service as stated above. On the other hand, Ld. Authorized Representative for petitioner has denied benefit of seniority and continuity in service to which he was entitled but for he was denied the regularization from initial engagement by respondent under the garb of intermittent breaks which has been established by petitioner by adducing reliable evidence on record this score. Certainly, when intermittent breaks had been given to petitioner from his initial engagement till April, 2006 the delay in regularization was obvious as it has been established on record that intermittent breaks were deliberately given to petitioner prior to April, 2006 rather after instructions issued *vide* letter dated 27-3-2006 Ex. PW1/B govt. of H.P. to respondent and all other field staff to give work to daily wage beldar for full month. As such, I find no substance in arguments advanced by Ld. Dy.D.A. for respondent that intermittent break was not deliberate and accordingly, it is held that intermittent breaks till April, 2006 as stated above were deliberately given so that petitioner did not complete 240 days in a year so as to avail benefit of Section 25-B of Act.

14. In so far as petitioner having not been gainfully employed during intermittent break as stated above, suffice would be to state here that petitioner in his cross-examination has specifically admitted that he had cultivable land and thus had livelihood therefrom. As such, it cannot be stated that petitioner had not remained gainfully employed during intermittent break period. I am supported by judgment of Hon'ble Apex Court in **North East Karnataka Road Transport**

**Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '*term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same*'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled back wages. Accordingly, issue No.1 is answered in affirmative in favour of petitioner and against the respondent.

15. In so far as claim of petitioner for regularization after 10 years of service as raised in his demand notice dated 30-3-2014 is concerned, it has been discussed in foregoing paras that due to deliberate breaks petitioner could not be regularized in the year 2007 as other co-workmen who were junior to him and thus petitioner too would be entitled for regularization after 10 years of service from his initial engagement. Merely because petitioner had been regularized is not sufficient to dislodge petitioner from claim for being regularized from his initial engagement from the year 1997 as disparity had been created by respondent in regularizing co-workmen who were junior to him under the garb of intermittent breaks. Be it noticed that respondent had sufficient work and funds and there was no reason for respondent to have not given work to petitioner for full month moreso when other co-workmen had been given work whose service had been regularized and thus petitioner too would be entitled for regularization like his colleagues *i.e.* co-workmen as has come in evidence from his initial engagement in service after requisite period of service required under the government policy for regularization. Be it noticed that respondent's document which is coming from custody of petitioner Ex. PW1/E dated 19-8-2013 with regard to references No. 212/12 (Tilak Raj), 217/12 (Pawan Kumar), 318/12 (Vijay Kumar), 232/12 (Kewal Krishan), 213/12 (Raj Kumar), 214/12 (Shamsher Singh), 215/12 Hem Raj & 216/12 (Ajay Kumar), all the workmen have been regularized as law department opined that workmen had been held entitled to seniority and continuity in service from the date of their initial engagement except back wages. Ex. PW1/F is the order dated 21-1-2014 of Superintending Engineer, IPH Circle Chamba giving effect to letter dated 19-8-2013. Ex. PW1/F further shows that date of deemed regularization *w.e.f.* 20-10-2007 as Chattro Keso Ram, Nidhia Ram & Gurditta which shows that all these workmen had been regularized after 10 years of service. Issue no. 2 is answered in affirmative in favour of petitioner and against respondent. Issue no. 3 is answered in favour of petitioner as discussed above. All these issues are answered accordingly.

*Issue No. 4:*

16. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Issue No. 5:*

17. In so far as plea of delay and laches raising the dispute by petitioner is concerned, suffice would be to state here that petitioner had been continuously working with respondent after having been engaged from 1st March, 1997 till his regularization *i.e.* October, 2013 and the intermittent breaks which had been given from 1st March, 1997 to April, 2006 were agitated by petitioner by making representations as can be gathered from para No.8 of claim petition as also

finds mentioned in affidavit Ex. PW1/A which shows that petitioner had made several requests with the respondent and thereafter matter had got into notice of government by trade union and thereafter under instructions *vide* letter No.IPH(A)2(B)1-2-2003-Part dated 27th March, 2006 Ex. PW1/B had been issued to all the Executive Engineers I&PH Department with directions to give work for full month basis. As such, after instructions from the government, petitioner had given regular work and thus delay in raising demand notice in 2014 cannot be stated to have remained unexplained as petitioner had been given work for full month after the instructions of government as stated above. Thus, the delay is satisfactorily explained which could not be stated to be deliberate on account of negligence of petitioner. Moreover, respondent has not disputed issuance of instructions to field staff to PWD/IPH for giving full work after March, 2006. As such, claim petition could not be stated to be barred by delay and laches as pleaded by respondent. This issue is answered in favour of petitioner and against the respondent.

*Relief:*

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement till April, 2006 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Dharamshala, H.P.*

-----  
IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 157/2016
Date of Institution	: 17-03-2016
Date of Decision	: 13-09-2018

Shri Ramesh Kumar s/o Shri Kishan Chand, r/o Village Udaipur, P.O. Saru, Tehsil and District Chamba, H.P. *..Petitioner.*

*Versus*

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. I.S. Jaryal, AR  
 For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

1. “Whether alleged time to time termination of services of Shri Ramesh Kumar s/o Shri Kishan Chand, r/o Village Udaipur, P.O. Saru, Tehsil and District Chamba, H.P. during the year 1997 to April, 2006 by the Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P., who had worked as beldar on daily wages basis and has raised his industrial dispute after more than 7 years *vide* demand notice dated 30-03-2014, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits the above worker is entitled to from the above employer/management?”
2. “Whether the demand of regularization of daily wagger services raised *vide* demand notice dated 30-03-2014 after more than 7 years of Shri Ramesh Kumar s/o Shri Kishan Chand, r/o Village Udaipur, P.O. Saru, Tehsil and District Chamba, H.P. to be fulfilled by Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P. from the date of his junior workmen have been regularized, as alleged by the worker, is legal and justified? If not, what arrear of wages and consequential relief of service benefits the above worker is entitled to from the above employer/management?”
2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.
3. Averments made in the claim petition reveal that petitioner had been engaged in the month of February, 1997 on muster-roll basis by respondent as daily-waged beldar who continuously worked till October, 2013 when his services had been regularized after about 17 years in the month of October, 2013. The grievance of petitioner as can be gathered from the claim petition reveal that respondent had given fictional/artificial breaks to petitioner by allowing to him work only for about 18 days in a month so that petitioner did not complete 240 days and could get benefit of Section 25-B of Industrial Disputes Act, 1947 (hereinafter called the "Act" for brevity). It is alleged that cessation of work for period of intermittent break for 12 to 13 days in each month from 1997 to April, 2006 for about nine years had been given due to which petitioner could not complete 240 days as stated above. Accordingly, having not completed 240 days in a year for the purpose of regularization of daily wage service the petitioner was not put into work charge cadre. It is alleged that service of petitioner has been interrupted by respondent by allowing him to allocate work for 18 days in a month whereas other junior workmen engaged on muster roll much after the petitioner had been given regular work in a month particularly co-workmen who had been engaged in the years 1997, 1998 and 1999 respectively. Thus, while allocating to work to junior and not allocating work to petitioner clearly established existence of sufficient budget and work and thus violated Section 25-G of Act which also amounts to unfair labour practice. It is claimed that junior workmen whose names had been reflected in Annexure P1 were junior to petitioner but were regularized after eight years and had completed 240 days in each year but contrarily due to break in

service petitioner could not be regularized. It is claimed that all these workmen have been allowed retrospective regularization on completion of eight years of service in view of judgment of Hon'ble High Court of H.P. titled as Rakesh Kumar Vs. State of H.P. and Ors. It is alleged that without any rhyme or reason, respondent had given break in service to petitioner discriminating against other co-workmen who were junior to petitioner and given work for full month. Accordingly, petitioner prays that period of intermittent illegal/artificial breaks given by respondent from time to time between 1997 to April, 2006 be declared illegal and unjustified and respondent be directed to count the period as continuous service for the purpose of 240 days in each calendar year from 1997 to 2006 as stated above besides back-wages and other consequential benefits and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been working continuously on daily wage basis but was not given break intermittently from 1997 to 2006 deliberately as claimed by petitioner rather after 2006 as stated above petitioner had been given work regularly. It is emphatically denied that fictional breaks had been given to petitioner deliberately so that he could complete 240 days besides as and when petitioner completed requisite criteria for regularization as per government policy he was regularized in the month of October, 2013. It has been denied that any junior workmen to the petitioner had been regularized in service rather only those workmen were regularized by respondent/department who had continuously worked with the respondent and fulfilled criteria for regularization as per government policy for regularization besides no provision of the Act as alleged by petitioner was violated by respondent. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of letter dated 27-4-2006 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copy of order dated 22-4-2013 Ex. PW1/D, copy of letter dated 19-8-2013 Ex. PW1/E, copy of regularization order dated 21-1-2014 Ex. PW1/F, copy of joint representations dated 13-4-2004 & 13-4-2004 Mark-A1 and Mark-A2, list of junior Mark-A3, copy of Divisional level seniority lists of junior daily wagers Mark- A4/Ex. P1 & Mark-A5/Ex. P2, copy of joint representation dated 22-4-2008 Mark-A6, copy of representation dated 17-5-2013 Mark A7 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kapur, the then Executive Engineer, IPH Division Chamba as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart of petitioner and other workers Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-10-2017 for determination:—

- (1) Whether time to time termination of services of the petitioner by respondent during year 1997 to April, 2006 is/was illegal and unjustified as alleged? ..OPP.
- (2) Whether the demand of regularization of daily wager service raised *vide* demand notice dated 30-3-2014 is legal and justified as alleged? ..OPP.
- (3) If issue No.1 or No.2 are proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.



(4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

(5) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: No
Issue No. 5	: No
Relief	: Petition is partly allowed per operative part of award.

### REASONS FOR FINDINGS

*Issues No.1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the petitioner that he had been engaged by respondent on 1<sup>st</sup> February, 1997 who continuously worked till date but was regularized in October, 2013. The grievance of petitioner remains two fold, firstly with regard to time to time break given from 1<sup>st</sup> February, 1997 to April, 2006 by respondent deliberately with the object that petitioner did not complete 240 days so as to meet requirement of Section 25-B of Act and secondly after having been engaged in 1997 was liable to be regularized in 2007 as per policy of the government but due to break in service from 1997 to April, 2006 he could not complete requisite criteria for regularization for government policy. As such, delay in regularization in October, 2013 on account of intermittent break has also been challenged. To appreciate controversy in issue evidence adduced by parties in support of their respective claims needs to be gone through but at this stage before proceeding further, it would be apt to refer to documentary evidence.

12. Ex. P2 is the seniority list revealing workers engaged in the years 1997 to 2000 to have been regularized by respondent but were certainly junior to petitioner. This document further shows that those workmen who had been engaged later than petitioner were not given intermittent break in service rather had been given adequate work. Ex. PW1/C is the mandays chart dealing with month-wise working days of petitioner from 1st February, 1997 to 31-10-2013. A bare glance at mandays chart Ex. PW1/C would show that petitioner had worked for 222 days in the year 1997, 188 days in 1998, 198 days in 1999, 208 days in 2000, 211 days in 2001, 206 days in 2002, 206 days in 2003, 205 days in 2004, 218 days in 2005, 317 days in 2006, 365 days in 2007, 366 days in 2008, 361 days in 2009, 365 days in 2010, 365 days in 2011, 364 days in 2012 and 276 days in 2013. This document clearly shows that petitioner had been given full month work from 1-4-2006 and prior to it petitioner was engaged only for 17 to 19 days in each month which further strengthens plea of petitioner that breaks in service prior to April, 2006 had been deliberately given by respondent as other co-workmen as discussed above had been given work for full month during that period although they were engaged in 1997 whereas petitioner had been engaged from 1st February, 1997. The fact that respondent had given deliberate intermittent breaks to petitioner can be safely gathered from Ex. P2 as co-workmen shown in it were admittedly junior to petitioner who had been regularized in 2007. It further finds support from cross-examination of RW1 Shri Dinesh Kapur, Executive Engineer, IPH Chamba as contesting respondent who revealed that co-workmen

reflected in Ex. P2 at Sl. nos.1 to 87 had been regularized and were junior to petitioner and thus claim of petitioner gets further strengthened not only from cross-examination of RW1 but also from documentary evidence establishing that junior to petitioner had not been given intermittent breaks who had been regularized in 2007 whereas petitioner has been regularized in October, 2013 who had joined much prior to these co-workmen as stated above.

13. Ld. Dy. D.A. for the respondent has vehemently argued that petitioner is working ever since February, 1997 whose service had been regularized in October, 2013 and the delay in regularization took place due to break in service as stated above. On the other hand, Id. Authorized Representative for petitioner has denied benefit of seniority and continuity in service to which he was entitled but for he was denied the regularization from initial engagement by respondent under the garb of intermittent break which has been established by petitioner from adducing reliable evidence on this score. Certainly, when intermittent breaks had been given to petitioner from his initial engagement till April, 2006 the delay in regularization was obvious as it has been established on record that intermittent breaks were deliberately given to petitioner prior to April, 2006 rather after instructions issued *vide* letter dated 27-3-2006 Ex. PW1/B govt. of H.P. to respondent and all other field staff to give work to daily wage beldar for full month. As such, I find no substance in arguments advanced by Ld. Dy.D.A. for respondent that intermittent break was not deliberate and accordingly, it is held that intermittent breaks till April, 2006 as stated above were deliberately given so that petitioner did not complete 240 days in a year so as to avail benefit of Section 25-B of Act.

14. In so far as petitioner having not been gainfully employed during intermittent break as stated above, suffice would be to state here that petitioner in his cross-examination has specifically admitted that he had cultivable land and thus had livelihood therefrom. As such, it cannot be stated that petitioner had not remained gainfully employed during intermittent break period I am supported by judgment of Hon'ble Apex Court in **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '*term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same*'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled backwages. Accordingly, issue No.1 is answered in affirmative in favour of petitioner and against the respondent.

15. In so far as claim of petitioner for regularization after 10 years of service as raised in his demand notice dated 30-3-2014 is concerned, it has been discussed in foregoing paras that due to deliberate breaks petitioner could not be regularized in the year 2007 as other co-workmen who were junior to him and thus petitioner too would be entitled for regularization after 10 years of service from his initial engagement. Merely because petitioner had been regularized is not sufficient to dislodge petitioner from claim for being regularized from his initial engagement from the year 1997 as disparity had been created by respondent in regularizing co-workmen who were junior to him under the garb of intermittent breaks. Be it noticed that respondent had sufficient work and funds and there was no reason for respondent to have not given work to petitioner for full month moreso when other co-workmen had been given work whose service had been regularized and thus petitioner too would be entitled for regularization like his colleagues *i.e.* co-workmen as has come in evidence from his initial engagement in service after requisite period of service required under the government policy for regularization. Be it noticed that respondent's document

which is coming from custody of petitioner Ex. PW1/E dated 19-8-2013 with regard to references No. 212/12 (Tilak Raj), 217/12 (Pawan Kumar), 318/12 (Vijay Kumar), 232/12 (Kewal Krishan), 213/12 (Raj Kumar), 214/12 (Shamsher Singh), 215/12 Hem Raj & 216/12 (Ajay Kumar), all the workmen have been regularized as law department opined that workmen had been held entitled to seniority and continuity in service from the date of their initial engagement except back wages. Ex. PW1/F is the order dated 21-1-2014 of Superintending Engineer, IPH Circle Chamba giving effect to letter dated 19-8-2013. Ex. PW1/F further shows that date of deemed regularization *w.e.f.* 20-10-2007 as Chattro Keso Ram, Nidhia Ram & Gurditta which shows that all these workmen had been regularized after 10 years of service. Issue No. 2 is answered in affirmative in favour of petitioner and against respondent. Issue No. 3 is answered in favour of petitioner as discussed above. All these issues are answered accordingly.

*Issue No. 4:*

16. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Issue No. 5:*

17. In so far as plea of delay and laches raising the dispute by petitioner is concerned, suffice would be to state here that petitioner had been continuously working with respondent after having been engaged from 1st April, 1997 till his regularization *i.e.* October, 2013 and the intermittent breaks which had been given from 1st February, 1997 to April, 2006 were agitated by petitioner by making representations as can be gathered from para No. 8 of claim petition as also finds mentioned in affidavit Ex. PW1/A which shows that petitioner had made several requests with the respondent and thereafter matter had got into notice of government by trade union and thereafter under instructions *vide* letter No. IPH(A)2(B)1-2-2003-Part dated 27<sup>th</sup> March, 2006 Ex. PW1/B had been issued to all the Executive Engineers I&PH Department with directions to give work for full month basis. As such, after instructions from the government, petitioner had given regular work and thus delay in raising demand notice in 2014 cannot be stated to have remained unexplained as petitioner had been given work for full month after the instructions of government as stated above. Thus, the delay is satisfactorily explained which could not be stated to be deliberate on account of negligence of petitioner. Moreover, respondent has not disputed issuance of instructions to field staff to PWD/IPH for giving full work after March, 2006. As such, claim petition could not be stated to be barred by delay and laches as pleaded by respondent. This issue is answered in favour of petitioner and against the respondent.

*Relief:*

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement till April, 2006 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Dharamshala, H.P.*

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 154/2016  
Date of Institution : 17-03-2016  
Date of Decision : 13-09-2018

Shri Suresh Kumar s/o Shri Gajlo Ram, r/o Village Bhanota, P.O. Chaned, Tehsil and District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I.&P.H. Division Chamba, District Chamba, H.P. *..Respondent.*

### Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

The reference given below has been received from the appropriate Government for adjudication:—

1. “Whether alleged time to time termination of services of Shri Suresh Kumar s/o Shri Gajlo Ram, r/o Village Bhanota, P.O. Chaned, Tehsil and District Chamba, H.P. during the year 1997 to April, 2006 by the Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P., who had worked as beldar on daily wages basis and has raised his industrial dispute after more than 7 years *vide* demand notice dated 30-03-2014, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits the above worker is entitled to from the above employer/management?”

2. “Whether the demand of regularization of daily wagger services raised *vide* demand notice dated 30-03-2014 after more than 7 years of Shri Suresh Kumar s/o Shri Gajlo Ram, r/o

Village Bhanota, P.O. Chaned, Tehsil and District Chamba, H.P. to be fulfilled by Executive Engineer, I.&P.H. Division, Chamba, District Chamba, H.P. from the date of his junior workmen have been regularized, as alleged by the worker, is legal and justified? If not, what arrear of wages and consequential relief of service benefits the above worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Averments made in the claim petition reveal that petitioner had been engaged in the month of April, 1997 on muster roll basis by respondent as daily-waged beldar who continuously worked till October, 2013 when his services had been regularized after about 17 years in the month of October, 2013. The grievance of petitioner as can be gathered from the claim petition reveal that respondent had given fictional/artificial breaks to petitioner by allowing to him work only for about 18 days in a month so that petitioner did not complete 240 days and could get benefit of Section 25-B of Industrial Disputes Act, 1947 (hereinafter called the "Act" for brevity). It is alleged that cessation of work for period of intermittent break for 12 to 13 days in each month from 1997 to April, 2006 for about nine years had been given due to which petitioner could not complete 240 days as stated above. Accordingly, having not completed 240 days in a year for the purpose of regularization of daily wage service the petitioner was not put into work charge cadre. It is alleged that service of petitioner has been interrupted by respondent by allowing him to allocate work for 18 days in a month whereas other junior workmen engaged on muster-roll much after the petitioner had been given regular work in a month particularly co-workmen who had been engaged in the years 1997, 1998 and 1999 respectively. Thus, while allocating to work to junior and not allocating work to petitioner clearly established existence of sufficient budget and work and thus violated Section 25-G of Act which also amounts to unfair labour practice. It is claimed that junior workmen whose names had been reflected in Annexure P1 were junior to petitioner but were regularized after eight years and had completed 240 days in each year but contrarily due to break in service petitioner could not be regularized. It is claimed that all these workmen have been allowed retrospective regularization on completion of eight years of service in view of judgment of Hon'ble High Court of H.P. titled as Rakesh Kumar vs. State of H.P. and Ors. It is alleged that without any rhyme or reason, respondent had given break in service to petitioner discriminating against other co-workmen who were junior to petitioner and given work for full month. Accordingly, petitioner prays that period of intermittent illegal/artificial breaks given by respondent from time to time between 1997 to April, 2006 be declared illegal and unjustified and respondent be directed to count the period as continuous service for the purpose of 240 days in each calendar year from 1997 to 2006 as stated above besides back-wages and other consequential benefits and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner had been working continuously on daily-wage basis but was not given break intermittently from 1997 to 2006 deliberately as claimed by petitioner rather after 2006 as stated above petitioner had been given work regularly. It is emphatically denied that fictional breaks had been given to petitioner deliberately so that he could complete 240 days besides as and when petitioner completed requisite criteria for regularization as per government policy he was regularized in the month of October, 2013. It has been denied that any junior workmen to the petitioner had been regularized in service rather only those workmen were regularized by respondent/department who had continuously worked with the respondent and fulfilled criteria for regularization as per government policy for regularization besides no provision of the Act as alleged by petitioner was violated by respondent. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of letter dated 27-4-2006 Ex. PW1/B, copy of mandays chart Ex. PW1/C, copy of order dated 22-4-2013 Ex. PW1/D, copy of letter dated 19-8-2013 Ex. PW1/E, copy of regularization order dated 21-1-2014 Ex. PW1/F, copy of joint representations dated 13-4-2004 & 13-4-2004 Mark-A1 and Mark-A2, list of junior Mark-A3, copy of Divisional level seniority lists of junior daily wagers Mark-A4/Ex. P1 & Mark-A5/Ex. P2, copy of joint representation dated 22-4-2008 Mark-A6, copy of representation dated 17-5-2013 Mark A7 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Dinesh Kapur, the then Executive Engineer, IPH Division Chamba as RW1 tendered/proved affidavit Ex. RW1/A, copy of mandays chart of petitioner and other workers Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-10-2017 for determination:—

- (1) Whether time to time termination of services of the petitioner by respondent during year 1997 to April, 2006 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) Whether the demand of regularization of daily wager service raised *vide* demand notice dated 30-3-2014 is legal and justified as alleged? ..*OPP*.
- (3) If issue No. 1 or No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ...*OPR*.
- (5) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Yes
Issue No. 2	: No
Issue No. 3	: Discussed
Issue No. 4	: No
Issue No. 5	: No
Relief	: Petition is partly allowed per operative part of award.

### REASONS FOR FINDINGS

*Issues No. 1 to 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the petitioner that he had been engaged by respondent on 1<sup>st</sup> April, 1997 who continuously worked till date but was regularized in October, 2013. The grievance of petitioner remains two fold, firstly with regard to time to time break given from 1<sup>st</sup> April, 1997 to April, 2006 by respondent deliberately with the object that petitioner did not complete 240 days so as to meet requirement of Section 25-B of Act and secondly after having

been engaged in 1997 was liable to be regularized in 2007 as per policy of the government but due to break in service from 1997 to April, 2006 he could not complete requisite criteria for regularization for government policy. As such, delay in regularization in October, 2013 on account of intermittent break has also been challenged. To appreciate controversy in issue evidence adduced by parties in support of their respective claims needs to be gone through but at this stage before proceeding further, it would be apt to refer to documentary evidence.

12. Ex. P2 is the seniority list revealing workers engaged in the years 1997 to 2000 to have been regularized by respondent but were certainly junior to petitioner. This document further shows that those workmen who had been engaged later than petitioner were not given intermittent break in service rather had been given adequate work. Ex. PW1/C is the mandays chart dealing with month-wise working days of petitioner from 1st April, 1997 to 31-10-2013. A bare glance at mandays chart Ex. PW1/C would show that petitioner had worked for 140 days in the year 1997, 179 days in 1998, 190 days in 1999, 186 days in 2000, 205 days in 2001, 199 days in 2002, 202 days in 2003, 205 days in 2004, 218 days in 2005, 313 days in 2006, 359 days in 2007, 360 days in 2008, 365 days in 2009, 365 days in 2010, 361 days in 2011, 364 days in 2012 and 276 days in 2013. This document clearly shows that petitioner had been given full month work from 1-4-2006 and prior to it petitioner was engaged only for 17 to 19 days in each month which further strengthens plea of petitioner that breaks in service prior to April, 2006 had been deliberately given by respondent as other co-workmen as discussed above had been given work for full month during that period although they were engaged in 1997 whereas petitioner had been engaged from 1st April, 1997. The fact that respondent had given deliberate intermittent breaks to petitioner can be safely gathered from Ex. P2 as co-workmen shown in it were admittedly junior to petitioner who had been regularized in 2007. It further finds support from cross-examination of RW1 Shri Dinesh Kapur, Executive Engineer, IPH Chamba as contesting respondent who revealed that co-workmen reflected in Ex. P2 at Sl. Nos.1 to 87 had been regularized and were junior to petitioner and thus claim of petitioner further gets strengthened not only from cross-examination of RW1 but also from documentary evidence establishing that junior to petitioner had not been given intermittent breaks who had been regularized in 2007 whereas petitioner has been regularized in October, 2013 who had joined much prior to these coworkers as stated above.

13. Ld. Dy. D.A. for the respondent has vehemently argued that petitioner is working ever since April, 1997 whose service had been regularized in October, 2013 and the delay in regularization took place due to break in service as stated above. On the other hand, Ld. Authorized Representative for petitioner has denied benefit of seniority and continuity in service to which he was entitled but for he was denied the regularization from initial engagement by respondent under the garb of intermittent break which has been established by petitioner from adducing reliable evidence on this score. Certainly, when intermittent breaks had been given to petitioner from his initial engagement till April, 2006 the delay in regularization was obvious as it has been established on record that intermittent breaks were deliberately given to petitioner prior to April, 2006 rather after instructions issued *vide* letter dated 27-3-2006 Ex. PW1/B govt. of H.P. to respondent and all other field staff to give work to daily wage beldar for full month. As such, I find no substance in arguments advanced by Ld. Dy.D.A. for respondent that intermittent break was not deliberate and accordingly, it is held that intermittent breaks till April, 2006 as stated above were deliberately given so that petitioner did not complete 240 days in a year so as to avail benefit of Section 25-B of Act.

14. In so far as petitioner having not been gainfully employed during intermittent break as stated above, suffice would be to state here that petitioner in his cross-examination has specifically admitted that he had cultivable land and thus had livelihood therefrom. As such, it cannot be stated that petitioner had not remained gainfully employed during intermittent break period I am supported by judgment of Hon'ble Apex Court in **North East Karnataka Road Transport Corporation Vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of

Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '***term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same***'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled back wages. Accordingly, issue No.1 is answered in affirmative in favour of petitioner and against the respondent.

15. In so far as claim of petitioner for regularization after 10 years of service as raised in his demand notice dated 30-3-2014 is concerned, it has been discussed in foregoing paras that due to deliberate breaks petitioner could not be regularized in the year 2007 as other co-workmen who were junior to him and thus petitioner too would be entitled for regularization after 10 years of service from his initial engagement. Merely because petitioner had been regularized is not sufficient to dislodge petitioner from claim for being regularized from his initial engagement from the year 1997 as disparity had been created by respondent in regularizing co-workmen who were junior to him under the garb of intermittent breaks. Be it noticed that respondent had sufficient work and funds and there was no reason for respondent to have not given work to petitioner for full month moreso when other co-workmen had been given work whose service had been regularized and thus petitioner too would be entitled for regularization like his colleagues *i.e.* co-workmen as has come in evidence from his initial engagement in service after requisite period of service required under the government policy for regularization. Be it noticed that respondent's document which is coming from custody of petitioner Ex. PW1/E dated 19-8-2013 with regard to references No. 212/12 (Tilak Raj), 217/12 (Pawan Kumar), 318/12 (Vijay Kumar), 232/12 (Kewal Krishan), 213/12 (Raj Kumar), 214/12 (Shamsher Singh), 215/12 Hem Raj & 216/12 (Ajay Kumar), all the workmen have been regularized as law department opined that workmen had been held entitled to seniority and continuity in service from the date of their initial engagement except back wages. Ex. PW1/F is the order dated 21-1-2014 of Superintending Engineer, IPH Circle Chamba giving effect to letter dated 19-8-2013. Ex. PW1/F further shows that date of deemed regularization *w.e.f.* 20-10-2007 as Chattro Keso Ram, Nidhia Ram & Gurditta which shows that all these workmen had been regularized after 10 years of service. Issue No. 2 is answered in affirmative in favour of petitioner and against respondent. Issue No. 3 is answered in favour of petitioner as discussed above. All these issues are answered accordingly.

*Issue No. 4:*

16. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Issue No. 5:*

17. In so far as plea of delay and laches raising the dispute by petitioner is concerned, suffice would be to state here that petitioner had been continuously working with respondent after having been engaged from 1st April, 1997 till his regularization *i.e.* October, 2013 and the intermittent breaks which had been given from 1st April, 1997 to April, 2006 were agitated by petitioner by making representations as can be gathered from para No.8 of claim petition as also finds mentioned in affidavit Ex. PW1/A which shows that petitioner had made several requests



with the respondent and thereafter matter had got into notice of government by trade union and thereafter under instructions *vide* letter No.IPH(A)2(B)1-2-2003-Part dated 27th March, 2006 Ex. PW1/B had been issued to all the Executive Engineers I&PH Department with directions to give work for full month basis. As such, after instructions from the government, petitioner had given regular work and thus delay in raising demand notice in 2014 cannot be stated to have remained unexplained as petitioner had been given work for full month after the instructions of government as stated above. Thus, the delay is satisfactorily explained which could not be stated to be deliberate on account of negligence of petitioner. Moreover, respondent has not disputed issuance of instructions to field staff to PWD/IPH for giving full work after March, 2006. As such, claim petition could not be stated to be barred by delay and laches as pleaded by respondent. This issue is answered in favour of petitioner and against the respondent.

*Relief:*

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement till April, 2006 and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time, leaving the parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
*Presiding Judge,*  
*Labour Court-cum-Industrial Tribunal,*  
*Dharamshala, H.P.*

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IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.).

Ref. No. : 17/2016  
Date of Institution : 20-1-2016  
Date of Decision : 13-9-2018

Smt. Shanti Devi d/o Shri Gulab Chand, r/o Village Kavas, P.O. Killar, Tehsil Pangi,  
District Chamba, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, I.P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ..Respondent.

### Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. T.R. Bhardwaj, AR  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

### AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the industrial dispute raised by the worker Smt. Shanti Devi d/o Shri Gulab Chand, r/o Village Kavas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 10-03-2012 regarding her alleged illegal termination of service during October, 2001 suffers from delay and laches? If not, Whether termination of the services of Smt. Shanti Devi d/o Shri Gulab Chand, r/o Village Kavas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during October, 2001 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1993 who continuously worked till October, 2001 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October, 2001 by an oral order without any reason whereas several other coworkers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retranchment of the petitioner and while retranching the services of petitioner, even principle of "Last come First go" had not been followed by the department/respondent. The petitioner has named 22 persons who were junior to petitioner and joined service from 1<sup>st</sup> January, 1997 to 1st April, 2001. In the end of month of October, 2001 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retranchment and at the same time, one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was *prima facie* illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no

charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2001 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back-wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retranchment by the respondent in the month of October, 2001. She further prayed for reinstatement in service *w.e.f.* month of October, 2001 along-with back-wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1993 to October, 2001 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 01-01-2003 having completed 08 years of service and per the policy of H.P. Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2001 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 22 in para No. 3 of the claim petition were appointed as per order of Labour Court whereas petitioner had left work of her own sweet will. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no. 4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala. It is denied that Trilok Nath had been engaged on 1-4-2002 who was much earlier on 2002. It is further stated that Dev Raj had re-engaged as direction of court as well as Gautam Singh and Sham Lal were engaged on compassionate grounds whereas petitioner had worked intermittently and left the job of his own accord. It is also contended that if petitioner had been terminated in 2001, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back-wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers, copy of mandays chart Ex. PW1/M, copy of demand notice Ex. PW1/N, copy of order dated 2-10-2013 Ex. PW1/O, copy of order of Hon'ble High Court dated 26-10-2015 Ex. PW1/P, copy of judgment dated 25-4-2016 Ex. PW1/Q and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive

Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays chart of workers Ex. RW1/C and closed evidence.

7. I have heard the Ld. Authorized Representative of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07-3-2018 and issues No. 1 and 2 were recasted on 13-9-2018 for determination which are as under:—

- (1) Whether the industrial dispute raised by petitioner *vide* demand notice dated 10-3-2012 *qua* her termination of service during October, 2001 by respondent suffers from the vice of delay and
- (2) Whether termination of the services of petitioner by the respondent during October, 2001 is/was illegal and unjustified as alleged? ..*OPP*.
- (3) If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1	: Discussed
Issue No. 2	: Yes
Issue No. 3	: Discussed
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump-sum compensation of Rs.1,00,000/- per operative part of award.

#### REASONS FOR FINDINGS

*Issues No.1, 2 and 3:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1994 till 2001 whereas the claimant/petitioner alleges that he had worked from May, 1993 to October, 2001. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from May, 1994 and not from May, 1993. Admittedly, the

reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back-wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to October, 2001. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 2001 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2001. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermittent breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 192 days in the year 1994, 132.5 days in 1995, 215.5 days in 1996, 220.5 days in 1997, 137 days in 1998 and 110 days in 2001 and thus a total of her service in 1994 to 2001 in 6 years she had worked for 897.5 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal

termination. It is evident from mandays chart Ex. RW1/B that in the year 2001 the petitioner had merely worked for 110 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01-8-1997 to 07-9-1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years for more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2001 even at the time when junior persons were re-engaged. That being so, the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No. 3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as reflected in Ex. RW1/C. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. RW1/C were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2001 and the industrial dispute was raised after 11 years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.)**

**1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Id. Authorized Representative for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service- Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief”.**

I have gone through the rival contention of the Id. Authorized Representative as well as Id. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of judgment 2013 *supra* has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 6 years and actually worked for 897.5 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2001 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eleven**

**years** *i.e.* demand notice was given in the year 10-3-2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 50 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back-wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches as discussed in foregoing paras.

19. In view of foregoing discussion, a lump-sum compensation of Rs.1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues No. 1, 2 and 3 are answered accordingly.

*Issue No. 4:*

20. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back-wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.



IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-  
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 600/2016  
Date of Institution : 27-8-2016  
Date of Decision : 04-09-2018

Miss Laxmi d/o Shri Bajir Chand, r/o Village Kuthah, P.O. Dharwas, Tehsil Pangi, District  
Chamba, H.P. ..Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D., Division, Pangi at Killar Tehsil Pangi, District  
Chamba, H.P. ...Respondent.

**Reference under Section 10 (1) of the Industrial Disputes Act, 1947**

For the Petitioner : Sh. O.P. Bhardwaj, Adv.  
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

**AWARD**

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Miss. Laxmi d/o Sh. Bajir Chand, Village Kuthah, P.O. Dharwas, Tehsil Pangi, Distt. Chamba, H.P. *w.e.f.* 1-10-1993 by the Executive Engineer, HPPWD Division, Pangi, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily-wages basis only for 351 days during the years 9/1990 to 9/1993 and has raised her industrial dispute *vide* demand notice dated 3-6-2015 after more than 22 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the years mentioned as above and delay of more than 22 years in raising the industrial dispute, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1994 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had

terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, she had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had re-engaged number of new workman from time to time and respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Bhag Dei who appointed in 1995, Jai Dass in 1998, Prakash Chand in 2001, Ram Dei in 2003, Dev Raj in 2004, Bameshwar Dutt in 2011 and Raj Kumar in 2011. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2005. She further prayed for reinstatement in service *w.e.f.* month of October, 2005 along-with back-wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to October, 2005 be counted 160 days continuous service and regularization of the service of petitioner *w.e.f.* 1-1-1999 having completed 8 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1990 who remained engaged till 1993 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come First go". It is also contended that if petitioner had been terminated in 1993 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri B.K. Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12-6-2018 for determination:—

- (1) Whether termination of service of petitioner by the respondent during October, 1993 is/was legal and justified? ..OPP.
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (5) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (6) Whether the claim petition is bad on account of delay and laches as alleged? ..OPR.

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1	: No
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Discussed
Relief	: Petition is partly allowed awarding lump sum compensation of Rs.20,000/- per operative part of award.

### REASONS FOR FINDINGS

*Issues No. 1, 2 and 4:*

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1990 till September,

1993 whereas the claimant/petitioner alleges that she had worked from 1994 to October, 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1990 to September 1993 and not from 1994 to October, 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division, Chamba District and remained engaged from 1990 to September, 1993. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 1993 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1993. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that petitioner had abandoned the job and thus plea of abandonment merits rejection.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 30 days in the year 1990, 149 days in 1991, 61 days in 1992 and 30 days in 1993 and

thus in her total service from 1990 to 1993 in 4 years as she had worked for 269 days. Be it noticed that petitioner had not worked for more than 160 days preceding 12 calendar months prior to termination and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to illegal termination. It is also evident from mandays chart Ex. RW1/B that in the year 1993, the petitioner had merely worked for 30 days and thus immediately in preceding 12 calendar months from the month of termination petitioner had factually not rendered service of 160 days continuous service of one year envisaged under Section 25-B of Act and thus it was not at all required for respondent to have issued a notice under Section 25-F of the Act. Accordingly, respondent is held to have not violated provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. PW1/B the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/B also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 1993 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1990 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-*cum*-Industrial Tribunal as reflected in Ex. PW1/B. This document has been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to year-wise mandays detail Ex. PW1/B were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negated. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G & 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in 1993, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied from admission of petitioner in cross-examination in which she had

maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **"term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same"**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, *Ld. Dy. D.A.* for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, *Ld. Counsel* for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:—

“12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. Vs. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

“17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In *Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors. (supra)* 1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief.....” (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of *Ajaib Singh Vs. The Sirhind Co-Operative Marketing-Cum- Processing Service Society Limited & Anr.*[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

“10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.....” (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

**17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the**

**State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1993 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Id. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforesaid judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Id. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125]**, the relevant para of the judgment are produced below for reference:—

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section-5 Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947-Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based



on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employee has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered incapacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121, Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh Vs. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another Vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In **2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd. Vs. Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh** provides that

before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 4 years and actually worked for 269 days as per mandays chart on record and that the services of petitioner were disengaged in 1993 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **twenty two years** i.e. demand notice was given on 3-6-2015. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25 (SC)**. The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013**. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar Vs. Joint Director Sericulture Department and another**. I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016) supra**, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

*Issue No. 3:*

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

*Relief:*

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of September, 2018.

Sd/-  
(K.K. SHARMA),  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal,  
Kangra at Dharamshala, H.P.

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गृह मंत्रालय

(भारत के महारजिस्ट्रार, नागरिक रजिस्ट्रीकरण का कार्यालय)

अधिसूचना

नई दिल्ली, 31 जुलाई, 2019

**सं० का. आ. 2753 (अ).—**नागरिकता (नागरिकों का रजिस्ट्रीकरण और राष्ट्रीय पहचान-पत्रों का जारी करना) नियमावली, 2003 के नियम 3 के उप-नियम (4) के अनुसरण में केंद्र सरकार एतद्वारा जनसंख्या रजिस्टर तैयार करने और उसे अद्यतन करने का निर्णय लेती है तथा स्थानीय रजिस्ट्रार के क्षेत्राधिकार के अन्तर्गत सामान्य तौर पर रहने वाले सभी व्यक्तियों की सम्बन्धित जानकारी एकत्र करने के लिए असम के अलावा देशभर में घर-घर जाकर गणना करने सम्बन्धी फील्ड कार्य 01 अप्रैल, 2020 से प्रारम्भ होकर 30 सितम्बर, 2020 की अवधि में किया जायेगा।

{फा. सं. 9/5/2019—सीआरडी(एनपीआर)}

विवेक जोशी,  
नागरिक रजिस्ट्रीकरण के महारजिस्ट्रार।

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**MINISTRY OF HOME AFFAIRS****(OFFICE OF THE REGISTRAR GENERAL CITIZEN REGISTRATION, INDIA)****NOTIFICATION***New Delhi, the 31st July, 2019*

**No. S.O. 2753 (E).**—In pursuance of sub-rule (4) of rule 3 of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, the Central Government hereby decides to prepare and update the Population Register and the field work for house to house enumeration throughout the Country except Assam for collection of information relating to all persons who are usually residing within the jurisdiction of Local Registrar shall be undertaken between the 1st day of April, 2020 to 30th September, 2020.

{F. No. 9/5/2019-CRD(NPR)}

VIVEK JOSHI,  
*Registrar General of Citizen Registration.*